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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 ROBERT “SONNY” WOOD, an individual;
ACCESS MEDICAL, LLC, a Delaware
15 limited liability company,

16 Plaintiffs,

17 vs.

18 NAUTILUS INSURANCE GROUP, a
19 Delaware limited liability company, et al.,

20 Defendant.
21

Case No.: 2:17-cv-02393-MMD-VCF

AMENDED JOINT PRETRIAL ORDER

22 COMES NOW, Plaintiffs ROBERT “SONNY” WOOD, II (“Wood”) and ACCESS
23 MEDICAL, LLC (“Access”; collectively, “Insureds” or “Plaintiffs”), by and through their counsel,
24 THE SCHNITZER LAW FIRM, and Defendant/Counter-claimant NAUTILUS INSURANCE
25 COMPANY (“Nautilus”), by and through its counsel, ARMSTRONG TEASDALE LLP and
26 KRONENBERG LAW PC (*pro hac vice*), to hereby provide the parties’ Amended Joint Pre-Trial
27 Order in this matter pursuant to Local Rules 16-3 and 16-4 and this Court’s Minute Order dated
28 March 10, 2023 (ECF No. 361). **Supplemental material is noted in bold.**

1 By signing this document, neither party is agreeing with any statement or position set forth
 2 by the other party in the respective separate statements. The parties only intend to be bound by their
 3 own statements and any clearly delineated agreements.

4 After pretrial proceedings in this case,

5 **IT IS ORDERED:**

6 **I. STATEMENT OF THE NATURE OF THE ACTION**

7 **A. Plaintiffs' Claims**

8 *1. Plaintiffs' Statement:*

9 This case involves Nautilus Insurance's handling of a claim for its insureds, the Plaintiffs in
 10 this case. After initially defending the action, Nautilus pulled coverage shortly before trial. This
 11 Court correctly determined that Nautilus had a duty to defend and breached a duty to defend its
 12 insureds in the underlying litigation.

13 As a result of the breach, Plaintiffs seek damages including, but not limited to, the resultant
 14 verdict and the unpaid defense fees incurred. Plaintiffs also seek recovery due to Nautilus'(1) breach
 15 of the duty to pay reasonable costs for independent counsel even after it acknowledged Plaintiffs
 16 were entitled to independent counsel; and (2) breach of the duty of good faith and fair dealing for:
 17 Nautilus' (a) failure to investigate the underlying allegations; (b) answering a legally deficient claim;
 18 (c) failure to apply ordinary meaning to its undefined Policy terms to the detriment of its Insureds;
 19 (d) Improper application of California law to disclaim its duty to defend; (e) misrepresentation of
 20 facts to the insured, contrary to NRS 686A.310(1)(a); (f) misrepresentation of provisions of the policy
 21 relating to coverage, contrary to NRS 686A.310(1)(a); (g) failure to timely respond to
 22 communications with Plaintiffs, contrary to NRS 686A.310(1)(b); (h) failure to comply with NRS
 23 686A.310(1)(c); (i) improper attempts to delegate its duty to investigate; (j) intentionally ignoring a
 24 mediation report that triggered the duty to defend; (k) failure to affirm or deny coverage within a
 25 reasonable time, contrary to NRS 686A.310(1)(d); (l) failure to settle the claim when presented with
 26 multiple reasonable opportunities to do so within policy limits; (m) forcing its insured to litigate to
 27 recovery benefits due, contrary to NRS 686A.310(1)(f); (n) admitted failure to give equal
 28 consideration to the interests of its insureds.

1 2. *Nautilus's Statement:*

2 This action arises out of the Insureds' request for defense and indemnity from Nautilus for
3 the underlying cross-complaint filed by Ted Switzer (the "*Switzer Action*"). In a decision confirmed
4 by the Ninth Circuit Court of Appeals, it has been judicially determined that there was no coverage
5 under the Nautilus policy (the "*Policy*") for the *Switzer Action*. *See generally, Nautilus Insurance*
6 *Company v. Access Medical, LLC, et al.*, Case No. 2:15-cv-00321-JAD-BNW (the "*Coverage*
7 *Action*"). The Nevada Supreme Court also ruled that Nautilus can obtain reimbursement from the
8 Insureds for the fees and costs it expended in defending the Insureds in the *Switzer Action*. *See*
9 *Nautilus Insurance Company v. Access Medical, LLC, et al.*, 137 Nev. Adv. Op. No. 10 (2021).¹

10 After Plaintiffs filed this action, this Court explicitly defined the limited scope of this case,
11 on numerous occasions, and made it abundantly clear that the Insureds are not permitted to re-litigate
12 matters that were and/or could have been addressed in the Coverage Action. Specifically, the Court
13 recently stated as follows: "The limited focus of this litigation is *whether the newly discovered*
14 *evidence which came to light after the district court granted summary judgment in the Coverage*
15 *Action* would have triggered a duty to defend and, if so, whether Defendant acted in bad faith *by*
16 *denying the re-tenders.*" ECF No. 315 at 12:4-8 (emphasis added).²

19 ¹ On April 21, 2022, Nautilus filed motions for summary judgment in the Coverage Action
20 seeking reimbursement against the Plaintiffs and Flournoy Management, LLC for defense
21 costs Nautilus incurred on behalf of its insured in the *Switzer Action*. (Coverage Action, ECF
22 Nos. 178, 181.) On November 10, 2022, Judge Dorsey ruled that Nautilus was entitled to
23 reimbursement of defense costs through the date Nautilus filed its declaratory relief complaint
24 on February 24, 2015. (Coverage Action, ECF No. 194.) On January 6, 2023, Nautilus filed a
25 renewed motion for reimbursement for defense costs incurred through February 24, 2015, and
26 for pre-judgment interest. (Coverage Action, ECF No. 202.) On March 28, 2023, Judge Dorsey
27 granted Nautilus' renewed motion for reimbursement in its entirety and entered Judgment in
28 favor of Nautilus and against Plaintiffs, jointly and severally, in the amount of \$25,788.66
(\$14,637.50 in defense costs; \$11,151.16 in pre-judgment interest) and against Flournoy
Management, LLC in the amount of \$209,799.72 (\$119,081.12 in defense costs; \$90,718.60 in
pre-judgment interest). (Coverage Action, ECF No. 206.)

² Nautilus respectfully reserves the right, upon good cause shown, to add additional exhibits and/or
witnesses to those listed below should the Court determine that the scope of this action is greater
than the limited scope recently reiterated in ECF No. 315.

1 Plaintiffs’ “Second Amended Complaint” (the “SAC”) asserted the following causes of
2 action: (1) breach of contract; (2) promissory estoppel; (3) tortious breach of the covenant of good
3 faith and fair dealing; and (4) unfair claims practices. ECF No. 73. Nautilus maintains that Plaintiffs
4 should take nothing by the SAC. *Id.*

5 Pursuant to the Court’s order on the parties’ cross-motions for summary judgment, dated
6 March 22, 2022, Nautilus’s motion for summary judgment was granted as to the promissory estoppel
7 claim, while Plaintiffs’ motion for partial summary judgment was granted as to the breach of contract
8 claim (the “MSJ Order”).³ ECF No. 315.

9 Nautilus did not commit “bad faith” because its denials of coverage were not knowingly or
10 recklessly “unreasonable.” This argument is supported for two reasons: (1) “The Court agrees with
11 [Nautilus] it is arguably reasonable that [Nautilus] relied upon the district court’s summary judgment
12 order to withdraw their defense after receiving the First Re-Tender” (ECF No. 315 at 32:8-10); and
13 (2) “[Nautilus’s] subjective understanding of the Policy’s coverage matters for bad faith, and here a
14 jury could find that Defendant’s interpretation of the Policy . . . was a reasonable error” (*Id.* at 33:11-
15 13). Similarly, under Nevada law, when an insurer has not acted unreasonably or unfairly in the
16 handling of the claim, the requirement to support a claim for unfair claims practices has not been
17 met. *See Igartua v. Mid-Century Ins. Co.*, 262 F. Supp. 3d 1050 (D. Nev. 2017).

18 Lastly, Nautilus is not liable for the judgment levied against the Insureds in the underlying
19 *Switzer* Action. In order to be held responsible for the judgment in the *Switzer* Action, the Insureds
20 are “tasked with showing that the breach *caused* the excess judgment and ‘[are] obligated to take all
21 reasonable means to protect [themselves] and mitigate [their] damages.’” *Century Sur. Co. v. Andrew*,
22 134 Nev. 819, 826 (2018) (emphasis added). The Insureds have not – and cannot – adduce any
23 evidence to support an argument that Nautilus’s alleged breach of contract *caused* the judgment
24 ordered in the *Switzer* Action – this is because, in reality, the entirety of the judgment is attributable
25 to the Insured’s grossly fraudulent conduct, as determined by the jury in the *Switzer* Action.

26
27
28 ³ Although the Court ruled that Plaintiffs have demonstrated liability on their breach of contract claim, the
Court also determined that “the issue of damage caused by that breach remains for trial.” ECF No. 315 at
40.

B. Nautilus's Counter-claims

1. Nautilus's Statement:

On July 1, 2019, Nautilus filed cross claims against Plaintiffs and Flournoy Management, LLC asserting unjust enrichment, equitable estoppel, and equitable subrogation that seek reimbursement for defense costs including attorneys' fees and disbursements that Nautilus incurred and actually paid on behalf of its insureds in the *Switzer* Action. (ECF No. 167, at pp. 17- 27.) In *Nautilus Insurance Company v. Access Medical, LLC, et al.*, 137 Nev. 96, 482 P.3d 683 (2021), the Nevada Supreme Court held that the theory of unjust enrichment permits an insurer to recover reimbursement of defense costs paid on behalf of its insured under a reservation of rights where 1) a court determines that an insurer never owed a duty to defend, 2) the insurer expressly reserved its rights to seek reimbursement in writing after a defense was tendered, and 3) the policyholder accepted the defense from the insured. *Id.* at 101-02, 482 P.3d at 688-89.

Taking into account the Judgment in the Coverage Action and this Court's March 22, 2022, Order on summary judgment that found that Nautilus's duty to defend was triggered upon the first re-tender on July 28, 2017 (*see* ECF No. 315), Nautilus is entitled to reimbursement of defense costs incurred on behalf of its insured from February 25, 2015, to July 27, 2017 in the following amounts: (1) \$876,744.95 against Access Medical and Robert Wood, jointly and severally, and (2) \$151,845.93 against Flournoy Management, LLC.⁴ Nautilus is also entitled to prejudgment interest on each award calculated at the legal rate in place when judgment is entered and accruing from the date of service of the Summons and Crossclaim.

2. Plaintiffs' Statement:

Nautilus is not entitled to reimbursement in this matter for several reasons: (1) there was not a determination that there was "never a duty to defend." The exact opposite happened in

⁴ Nautilus intends to take default against Flournoy Management, LLC, and move for entry of default judgment thereby eliminating the need to adjudicate the reimbursement claims against Flournoy Management, LLC at trial.

this case as the Court determined a duty to defend did exist; (2) Wood and Access sent a letter indicating it would not reimburse Nautilus for defense costs. Importantly, this letter was not in evidence in the first case because it was sent after the relevant period in *Nautilus I*; (3) the amount of fees sought are unreasonable for several reasons including the fact that Nautilus unilaterally switched to more expensive defense counsel without consulting its insured. This switch also caused unnecessary and duplicative work done by the new attorneys getting up to speed on the case; and (4) the Nevada Supreme Court's decision does not apply to independent counsel fees as those are not defense costs but, rather, are required due to conflicts of interest.

II. JURISDICTION

This is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of costs and interest. This court has diversity jurisdiction under 28 U.S.C. §1332.

III. STIPULATED FACTS

The following facts are admitted by the parties and require no proof:

1. Nautilus issued Policy No. BN952426 to named insured "Access Medical," effective January 15, 2011, to January 15, 2012. .
2. On December 27, 2011, Ted Switzer ("Switzer") filed a complaint against the Insureds in the *Switzer* Action (the "Switzer Original Complaint").
3. The Switzer Original Complaint alleged that Switzer was "concerned about the management of Flournoy [the company created between Switzer and Wood] and desires to obtain information necessary to the process of evaluating whether or not Flournoy has been managed and operated in a manner consistent with [Switzer's] rights as a member of Flournoy."
4. On June 3, 2013, Switzer filed a cross-complaint in the *Switzer* Action (the "Switzer Cross-Complaint").
5. The Insureds tendered the Switzer Cross-Complaint to Nautilus, and in the course of investigating that tender, Nautilus discovered a July 25, 2011, email sent by Jacquie Weide, Operations Manager for Access, to Deborah Fanning of Santa Barbara Cottage Hospital (the "Weide Email").

6. In the email string, Ms. Weide advised Ms. Fanning that Access was interested in obtaining a contract with Cottage Hospital to provide spinal implants.

7. When Ms. Fanning asked for more information, Ms. Weide responded, in relevant part, as follows:

I believe Dr. Early and Dr. Kahmann were using Alphatec's implants *but their Distributor in the California area is now banned from selling Alphatec implants*. We are in Las Vegas and have been using their products here for 2 years. Alphatec recently contacted us and asked that we take over the California region as well.

(emphasis added).

8. On July 28, 2017, the Insureds' counsel sent a "re-tender of defense" letter to Nautilus's counsel contending that the deposition testimony of Jacqueline Weide, Theodore Switzer, and Dixie Switzer⁵ triggered the duty to defend (the "First Re-Tender").

9. On August 24, 2017, the Insureds' counsel emailed Nautilus's counsel arguing that questions asked during voir dire at the trial in the *Switzer* Action triggered a duty to defend (the "Second Re-Tender").

10. The trial transcript contained several lines of questions that Switzer's counsel asked of potential jurors, including "has anybody ever said anything about you that was false?" and "anybody else have an experience like that where somebody said something about them that wasn't true?"

11. On August 31, 2017, Nautilus sent a letter to the Insureds denying coverage for the Second Re-Tender.

12. On September 19, 2017, the Insureds' counsel again re-tendered the defense to Nautilus based on the trial testimony of Dixie Switzer, which the Insureds argued provided indication that the Weide Email was false (the "Third Re-Tender").

13. On October 10, 2017, and October 26, 2017, Nautilus sent letters to the Insureds denying coverage for the below-defined Fourth Re-Tender.

14. On September 12, 2019, the "Final Statement of Decision and Judgment on Special Verdict – Modified After Appeal" was entered against the Insureds in the *Switzer* Action.

⁵ The letter referred to the deposition testimony of Mr. Wood, but it was later clarified that counsel meant to refer to the testimony of Dixie Switzer.

15. The hourly billing rates of Wolfe & Wyman LLC and Gordon Rees Scully Mansukhani, LLP, who were defense counsel for Plaintiffs in the *Switzer* Action, were reasonable and within market rates for the legal work performed.

IV. CONTESTED ISSUES OF FACT

The following facts, though not admitted, will not be contested at trial by evidence to the contrary. The following are the issue of fact to be tried and determined at trial.

A. Plaintiffs' Issues Of Fact:

The following allegations in the Complaint were admitted by Nautilus in its answer⁶:

13. On or about January 15, 2011, Nautilus provided a Policy to its Insureds, policy number of BN952426 (hereinafter the "Policy"). The effective dates of coverage for the 2011 Policy were January 15, 2011, to January 15, 2012.

19. Section II(c) of the 2011 Policy, titled "WHO IS AN INSURED" sets forth, inter alia, the following:

SECTION II- WHO IS AN INSURED

...

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

20. Based upon Section II(c) of the Policy, Access and Mr. Wood are insureds in accordance to the Policy.

21. Based upon Coverage B in the Policy, the Policy provided that Nautilus would provide a defense and indemnification for Plaintiffs from claims against Plaintiffs involving "Personal and Advertising Injury."

22. The Policy defined "Personal and Advertising Injury" as an injury arising out of an "Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services[.]"

25. In the Cross-Complaint described in Paragraph 24, Mr. Switzer asserted the tort intentional interference with prospective business, specifically titled "Interference with Prospective Economic

1 Advantage,” against the Insureds on multiple occasions.

2 26. The *Switzer* Action alleged against, inter alia, that Wood, on behalf of Flournoy and Access:
3 Intentionally and without justification or privilege... acted to disrupt the relationship
4 between Mr. Switzer and Alta Bates Hospital by his wrongful acts as alleged herein...
5 The wrongful acts of Mr. Wood did in fact result in a disruption of the relationship...
6 Alta Bates Hospital ceased using Mr. Switzer... but, instead used Mr. Wood and
7 business entities associated with Mr. Wood...

8 27. The identical allegations as described in Paragraph 26 of this Second Amended Complaint
9 were made at least two more times in the Cross-Complaint.

10 29. As held by the California Supreme Court in *Della Penna v. Toyota Motor Sales, U.S.A.*, 902
11 P.2d 740, 751 (Cal. 1995), one of the elements to the tort titled intentional interference with
12 prospective business advantage is that the tortfeasor committed intentional acts that disrupted the
13 prospective business relationship.

14 30. As held by the California Supreme Court in *Della Penna v. Toyota Motor Sales, U.S.A.*, 902
15 P.2d 740, 751 (Cal. 1995), in order to sufficiently allege that the tortfeasor committed intentional acts
16 that disrupted the prospective business relationship, the claimant must allege that the tortfeasor
17 engaged in an independent act that was wrongful by some legal measure other than the fact of
18 interference itself.

19 36. Based upon the *Switzer* Action, the Insureds tendered defense to Nautilus on or about
20 November 14, 2013.

21 38. Once the Insureds tendered the defense of the *Switzer* Action to Nautilus as described in
22 Paragraph 36, Nautilus had the duty to thoroughly investigate the allegations behind the Cross-
23 Complaint in the *Switzer* Action in order to ascertain whether it had the duty to defend the Insureds
24 in the *Switzer* Action.

25 42. Nautilus’s analysis of thoroughly investigating the facts behind the Cross-Complaint in the
26 *Switzer* Action included Nautilus considering extrinsic evidence in its analysis as to whether it had
27 the duty to defend the Insureds in the *Switzer* Action.

28 46. This e-mail described in Paragraph 37 of this Complaint, which was sent by Jacqueline
Weide, a representative of Access, to one of Mr. Switzer’s former customers, informed the former
customer that the “Distributor in the California area is now banned from selling Alphatec products”
(hereinafter the “E-mail”).

50. After more than four months of Plaintiffs receiving no response from Nautilus regarding Plaintiffs' tender of defense although Plaintiffs requested a response multiple times, Nautilus agreed to defend the Insureds in the *Switzer* Action.

56. The Supreme Court of Nevada has held that when there is conflict of interest between the insurer and the insured, the insurer is required to allow insureds to select their own counsel and to pay the reasonable costs for the independent counsel's representation. *State Farm Mut. Auto. Ins. Co. v. Hansen*, 357 P.3d 338 (Nev. 2015).

57. In accordance to *State Farm Mut. Auto. Ins. Co. v. Hansen*, Nautilus was required to allow Plaintiffs to select their own independent counsel due to the fact there was an actual conflict of interest between Nautilus and its Insureds in regard to Nautilus's duty to defend and indemnify in the *Switzer* Action at the time Nautilus agreed to defend the Insureds.

58. Although Nautilus was required to pay for the reasonable rate of Insureds' independent counsel, Nautilus refused to pay the full hourly rate that the Insureds' independent counsel billed throughout the time independent counsel represented the Insureds.

60. Independent counsel continued to represent the Insureds throughout the *Switzer* Action, from which a verdict was not reached until November of 2017.

69. Instead of investigating the facts behind the legally deficient Cross-Complaint in the *Switzer* Action, Nautilus filed a Complaint (hereinafter "Nautilus Complaint") in the United States District Court for the District of Nevada against the Insureds for declaratory relief regarding the duty to defend and indemnify the Insureds in the *Switzer* Action on February 24, 2015 (hereinafter the "Declaratory Action").

71. On January 15, 2016, Nautilus filed a Partial Motion for Summary Judgment seeking a declaratory judgment that it has no duty to defend the Insureds in the *Switzer* Action.

73. On September 27, 2016, the United States District Court for the District of Nevada decided that Nautilus did not have the duty to defend the Insureds in the *Switzer* Action at the time Nautilus's Complaint was filed.

75. On October 25, 2016, Nautilus filed a Motion for Further Relief in the United States District Court for the District of Nevada in order to request that it be reimbursed for the defense costs it paid

1 in the *Switzer* Action.

2 76. On October 25, 2016, the Insureds filed a Motion for Reconsideration in regards to the Order
3 Granting Nautilus's Partial Motion for Summary Judgment.

4 77. Nautilus sent a letter to the Insureds dated November 7, 2016, that it would "continue to
5 provide a defense to its Insureds in the [*Switzer*] Action until there is a decision on the Insureds'
6 motion for reconsideration and appeal, if any."

7 78. The Insureds sent a letter to Nautilus dated November 9, 2016, that it continued to accept and
8 expected Nautilus to provide a defense to them in the *Switzer* Action until the United States District
9 Court for the District of Nevada and, if necessary, the United States Ninth Circuit Court of Appeals
10 decided Nautilus's duty to defend its Insureds in the *Switzer* Action.

11 85. The Insureds sent a letter to Nautilus dated May 19, 2017, that informed Nautilus that they
12 were going to appeal the United States District Court for the District of Nevada's Order Denying the
13 Motion for Reconsideration and thus expected Nautilus to defend them in the *Switzer* Action as
14 represented in Nautilus's letter dated November 7, 2016, through the appeal to the United States
15 Court of Appeals for the Ninth Circuit.

16 86. On June 16, 2017, Nautilus filed a Notice to Appeal the United States District Court of
17 Appeals for the Ninth Circuit appealing the United States District Court for the District of Nevada's
18 Order denying its Motion for Further Relief.

19 87. On June 19, 2017, the Insureds filed a Notice of Appeal to the United States Court of Appeals
20 for the Ninth Circuit appealing the United States District Court for the District of Nevada's Order
21 denying their Motion for Reconsideration.

22 88. As represented in Nautilus's letter dated November 7, 2016, Nautilus continued to provide a
23 defense for the Insureds in the *Switzer* Action for a period of time.

24 100. Unexpectedly, Linda Hsu of Selman Breitman, LLP, acting as an agent of Nautilus under
25 actual and apparent authority, sent a letter dated July 6, 2017, that stated Nautilus was abruptly
26 withdrawing the defense in the *Switzer* Action on August 1, 2017.

27 101. On July 18, 2017, the Insureds sent a letter to Linda Hsu informing her that the Insureds relied
28 on her representations in the letter dated November 7, 2016, which provided that Nautilus would

1 continue to provide a defense for the Insureds in the *Switzer* Action through any appeal.

2 103. The letter dated July 18, 2017, to Ms. Hsu also stated that Nautilus was committing bad faith
3 by making its Insureds pay for a portion of the fees for independent counsel while Nautilus
4 determined if there was coverage under the Policy.

5 112. Based on the new evidence, the Insureds sent a letter to Ms. Hsu dated July 28, 2017, that
6 stated despite the Insureds' belief that Nautilus had the duty to defend from the inception of the
7 *Switzer* Action, the Insureds were re-tendering the defense in the *Switzer* Action.

8 115. Based on the new evidence described in Paragraphs 104 to 111 of this Complaint, the Insureds
9 filed an Application for an Order Directing or Indicating to the United States Court of Appeals for
10 the Ninth Circuit that the District Court will Grant or Entertain Access and Mr. Wood's Motion for
11 Relief Pursuant to Rule 60(b)(2) on August 8, 2017, at the United States District Court for the District
12 of Nevada (hereinafter the "Application I").

13 116. Although Rule 60(b)(2) of the Federal Rules of Civil Procedure allows district courts to
14 provide relief from judgment on the basis of newly discovered evidence, the United States District
15 Court for the District of Nevada denied Application I on the basis that the deposition transcripts
16 described in Paragraphs 105 to 114 of this Complaint were not relevant to the relief that Nautilus
17 requested in the federal court action.

18 117. Specifically, the United States District Court for the District of Nevada refused to formally
19 consider the new evidence because Nautilus's Complaint for declaratory relief "did not seek a
20 declaration about whether it might owe a duty to defend in the future-such as if it were presented
21 with new evidence that triggers coverage under its policy...*So even if the defendants are right that*
22 *there is newly discovered evidence warranting relief under Rule 60, newly-discovered*
23 *evidence is not relevant to the relief that Nautilus requested in this case.*"

24 121. As a result of the new information regarding the attempts of Mr. Switzer's counsel to have
25 the jury decide whether the Insureds committed defamation based on the E-mail, the Insureds filed a
26 second Application for an Order Directing or Indicating to the United States Court of Appeals for the
27 Ninth Circuit that the District Court will Grant or Entertain Access and Mr. Wood's Motion for Relief
28 Pursuant to Rule 60(b)(2) on November 3, 2017 at the United States District Court for the District of

1 Nevada (hereinafter the “Application II”).

2 122. On December 29, 2017, The United States District Court for the District of Nevada denied
3 the Insureds’ Application II on the basis that the Court could not consider the new evidence because
4 the new evidence was “not relevant to the relief that Nautilus requested in [that] case” and the
5 Insureds were required to show that Nautilus knew of this evidence before it filed the declaratory
6 relief action.

7 127. The verdict in the *Switzer* Action was appealed and is currently on appeal as of the date this
8 Complaint was filed.

9 128. As of the date this Complaint was filed, the orders concerning the Insureds’ Motion for
10 Reconsideration, Nautilus’s Motion for Further Relief, Application I, and Application II in the
11 Declaratory Action are currently on appeal in the United States Appellate Court for the Ninth Circuit.

12 132. The Insureds and Nautilus were bound by a contractual relationship in accordance to the terms
13 in the Policy.

14 133. Nevada law applies as to the interpretation of the Policy.

15 134. In accordance to the Policy, Nautilus was required to defend the Insureds for any claims that
16 were potentially covered under the Policy.

17 135. The duty to defend includes settlement duties as set forth in *Allstate v. Miller*, 212 P.2d 318,
18 323 (Nev. 2009).

19 138. At all relevant times, Nautilus was paid all premiums due under the Policy.

20 146. Linda Hsu, Esq., acting under apparent and/or express authority for Nautilus, informed the
21 Insureds on or around November 7, 2016, that Nautilus would “continue to provide a defense to
22 its Insureds in the [*Switzer*] Action until there is a decision on the Insureds’ motion for
23 reconsideration and appeal, if any.”

24 159. Defendant owed Plaintiffs a duty of good faith and fair dealing with respect to all transactions
25 and relationships arising under or in connection with the Policy and representations made in its letter
26 dated November 7, 2016.

27 161. Nautilus owed the Insureds a duty of good faith and fair dealing when Nautilus agreed to
28 accept the Insureds’ tender of defense in accordance to the Policy.

1 162. In the alternative, Nautilus owed the Insureds a duty of good faith and fair dealing when
2 Nautilus agreed to accept the Insureds' tender of defense, regardless if the Insureds' claim in the
3 *Switzer* Action was ultimately covered under the Policy.

4 163. Nautilus owed the Insureds a duty of good faith and fair dealing the entire time Nautilus
5 controlled the reigns of defense in the *Switzer* Action.

6 167. Included in its duty of good faith and fair dealing, Nautilus had the duty to properly defend
7 the Insureds in the *Switzer* Action once Nautilus agreed to accept the Insureds' tender of defense.

8 170. Due to the fact that there was an actual conflict of interest between Nautilus and the Insureds,
9 Nautilus had the duty to pay a reasonable rate for the Insureds' independent counsel as it related to
10 the *Switzer* Action.

11 182. Defendant violated NRS 686A.310, subsection (a), when, amongst other malfeasances
12 described in the above paragraphs, it misrepresented to the Insureds that Nautilus would "continue
13 to provide a defense to its Insureds in the *Switzer* Action until there is a decision on the Insureds'
14 motion for reconsideration and appeal, if any[.]" but refused to follow through with its
15 representations.

16 183. Defendant also violated NRS 686A.310, subsection (a), by misrepresenting to the Insureds
17 pertinent facts or insurance policy provisions relating to the Policy, which included, but was not
18 limited to Nautilus disclaiming its duty to defend its Insureds in the *Switzer* Action when the
19 allegations against the Insureds included claims potentially covered under the Policy.

20 **184. Plaintiff objected to reimbursement of defense costs in its November 9, 2016, letter.**

21 **185. There was not a determination that there was "never a duty to defend." The exact**
22 **opposite happened in this case as the Court determined a duty to defend did exist**

23 **186. The amount of fees sought are unreasonable for several reasons including the fact that**
24 **Nautilus unilaterally switched to more expensive defense counsel without consulting its insured.**
25 **This switch also caused unnecessary and duplicative work done by the new attorneys getting**
26 **up to speed on the case.**

27 **187. Independent counsel costs are not "defense" costs as discussed by the Nevada Supreme**
28 **Court in the *Nautilus* case nor were they considered .**

B. Nautilus's Issues of Fact⁷:

The Policy included Coverage B, Personal and Advertising Injury Liability, which included the following pertinent provision and definitions:

SECTION I – COVERAGES

**...
COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply[.]

...

SECTION V – DEFINITIONS

...

- 14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

...

- d. Oral or written publication, in any manner, of material that **slanders or libels a person or organization or disparages a person's** or organization's goods, products or services[.] (emphasis added).

2. Paragraph 43 of the Switzer Cross-Complaint alleged:

... Mr. Wood took in income ... that should have been delivered to Flournoy, but deposited less ... of that money ... into Flournoy's bank account; Mr. Wood deposited into Flournoy's bank account ... income provided by business entities associated with Mr. Switzer, but distributed less ... from Flournoy's bank account to Mr. Switzer ... while at the same time paying [money] ... to Mr. Wood's business, Access, from Flournoy's bank account despite the fact that [Switzer] had paid, or had become obligated to pay, expenses properly reimbursable by Flournoy ...; Mr. Wood received income that should have been delivered to Flournoy ... in the form of hospitals' payments of invoices, but deposited none of that money into Flournoy's bank account; Mr. Wood received income that should have been delivered to Flournoy ... in the form of checks from ... business entities associated with Mr. Switzer, but deposited none of that money into Flournoy's bank account; Mr. Wood took away from Mr. Switzer and kept for himself the lucrative business relationships and income

⁷ In "Plaintiffs' Issues Of Fact" section, Plaintiffs claim, prior to listing their issues of fact, that "[t]he following allegations in the Complaint were admitted by Nautilus in its answer[.]" However, Nautilus categorically denies and disagrees with this statement as all of the following "facts" were not admitted by Nautilus in its Amended Answer to the Second Amended Complaint. In fact, Nautilus explicitly denied some of these "facts" and/or advised that the allegations state a legal conclusion to which no response was required.

1 Mr. Switzer had developed and enjoyed with hospitals previously serviced by . . . the
business entities associated with Mr. Switzer[.]

2 3. The only causes of action in the Switzer Cross-Complaint that the Insureds contended were
3 covered under the Policy are claims 13 through 15, entitled "Interference with Prospective Economic
4 Advantage."

5 4. The allegations in those causes of action were identical except that they referred to different
6 hospitals in which Switzer "enjoyed a long-standing and mutually beneficial relationship."

7 5. Switzer alleged: (1) Wood "acted to disrupt the relationship between Mr. Switzer and
8 [hospital] by his wrongful acts as alleged herein [i.e. the allegations in ¶ 43 cited above]"; and (2)
9 those wrongful acts (i.e. the taking away by Wood of the business relationships and income Switzer
10 had developed and enjoyed with hospitals) "[have] resulted in injury to the personal and business
11 reputation of Mr. Switzer . . ."

12 6. Although Nautilus did not believe that the statement in the Weide Email rose to the level of
13 slander, libel, or disparagement sufficient to trigger coverage under the Policy, Nautilus agreed to
14 provide the Insureds with a defense against the Switzer Cross-Complaint, subject to a full and
15 complete reservation of rights.

16 7. On February 24, 2015, Nautilus filed the Coverage Action.

17 8. On January 15, 2016, Nautilus filed a Motion for Partial Summary Judgment in the Coverage
18 Action.

19 9. On September 27, 2016, the Court granted Nautilus's motion, finding that:

20 [A] disparagement claim "requires a plaintiff to show a false or misleading statement
21 that (1) specifically refers to the plaintiff's product or business and (2) clearly
22 derogates that product or business. Each requirement must be satisfied by express
23 mention or by clear implication." Libel and slander are both forms of defamation, and
each requires proof of a false and unprivileged communication that injures the
plaintiff's reputation.

24 Switzer's cross-complaint—even when read in conjunction with the [Weide Email] -
25 - does not give rise to a potential claim for slander, libel, or disparagement (or include
allegations of those offenses), and therefore does not trigger Nautilus's duty to defend
under the 'personal and advertising injury' provision of the policy. . . .

26 Even assuming that the [Weide email] mentions Switzer by clear implication (he is
27 not expressly named) defendants do not argue—let alone offer any facts to show—
28 that the e-mail contains a false statement, i.e., that Switzer was not, at that time,
banned from distributing Alphatec spinal implants as the e-mail states. Additionally,
nowhere in Switzer's cross-complaint does he allege that defendants made any false

statement about him in an effort to tortuously interfere with his business relationships, and the cross-complaint does not mention or incorporate the [Weide Email].

10. The Court stated specifically, "Switzer does not base his interference with prospective economic advantage claims on allegations of defamation."

11. The Insureds subsequently filed a motion for reconsideration, which was denied, and the ruling was appealed to the Ninth Circuit on June 19, 2017.

12. On November 7, 2016, Nautilus sent a letter to the Insureds stating: (1) ". . . Nautilus will continue to provide a defense to its Insureds in the [Switzer] Action until there is a decision on the Insureds' motion for reconsideration and appeal, if any. Nautilus will continue to provide for the Insureds' defense *under a complete reservation of rights*. . . "; and (2) "Please note that nothing in this letter abrogates, curtails, extinguishes, limits or lessens, or in any other capacity restricts *the reservation of rights asserted to date by Nautilus*, including but not limited to, the rights reserved by Nautilus in its May 19, 2014, October 2, 2014, October 14, 2014 and April 5, 2016 reservations of rights letters. Nautilus reserves all rights under the policy" (emphasis added).

13. After the Insureds' motion for reconsideration was denied by the district court, Nautilus informed the Insureds, on July 6, 2017, that it would be executing its reserved right to withdraw from the Insureds' defense in the *Switzer* Action, effective August 1, 2017.

14. On July 2, 2019, the Ninth Circuit later affirmed the granting of summary judgment to Nautilus.

15. In its order, the Ninth Circuit held as follows: "[T]he district court properly entered a declaratory judgment in favor of Nautilus because the underlying proceedings did not trigger Nautilus's duty to defend . . . Because the allegations in the underlying action stem from an injury that occurred in California, California law governs the rights and liabilities of the parties as it pertains to Nautilus's duty to defend [citation]. . . Even if [the Weide Email] could be understood to reference Switzer, it does not contain a false statement that explicitly disparaged him [citations] . . . and therefore it did not trigger a duty to defend [citation]."

16. The deposition transcripts related to the First Re-Tender confirmed as follows:

a. Switzer testified that he was in fact terminated by Alphatec;

b. Attached to Switzer's deposition transcript was an April 28, 2011 email, which predated the Weide Email sent on July 25, 2011, which stated that "[Switzer's] distribution relationship with [Alphatec] will terminate effective as of your receipt of this letter";

c. Dixie Switzer testified that after an unflattering Wall Street Journal article was published about her husband, Alphatec terminated its contract with Switzer;

d. Jacquie Weide testified that she understood from the Alphatec representative that Alphatac had cancelled Switzer's contract and would "no longer work with Mr. Switzer."

17. In the meantime, during the pendency of the appeal in the Coverage Action, the Insureds moved for relief from the summary judgment order based on this deposition testimony submitted with the First Re-Tender.

18. On August 11, 2017, the Court denied the Insureds' motion for relief and Judge Dorsey held as follows:

[T]his new evidence probably does not trigger Nautilus's coverage. Although the plaintiff in the underlying case suggests that the defendants exaggerated in an email about whether he was banned from selling products, it remains unclear that the statements in the email are false and meet the other elements of slander or disparagement under the applicable state law (e.g., there is no evidence that the communications were unprivileged). Not to mention that nowhere in the plaintiff's complaint in the state case is it alleged that the defendants made any false statement; indeed, this email is not even mentioned. Even if I were able to get to the merits here, I would continue to hold that Nautilus has no coverage obligation.

19. On August 10, 2017, Nautilus sent a letter to the Insureds denying coverage for the First Re-Tender.

20. Ms. Switzer's testimony included the question, "But in fact, Alphatec had terminated Omega's contract; correct?"; however, Ms. Switzer did not directly answer the question, and instead responded, "But we could still sell the product."

21. On September 26, 2017, Nautilus sent a letter to the Insureds denying coverage for the Third Re-Tender.

22. On September 27, 2017, the Insureds' counsel again re-tendered the defense based on trial

1 testimony of Jacquie Weide and Ted Switzer and on October 2, 2017, the Insureds' counsel provided
2 trial transcripts of discussions before the Court about jury instructions (the "Fourth Re-Tender").

3 23. The "new evidence" submitted with the Fourth Re-Tender showed as follows:

4 a. Ms. Weide's trial testimony acknowledged that "the distributor that [she] was
5 referring to [in the Weide Email] . . . was Ted Switzer";

6 b. Switzer testified, similar to his wife, that they could sell existing Alphatec product;

7 c. Switzer did not deny at trial that he was banned from selling Alphatec products,
8 nor did he testify that he was disparaged or harmed by the Weide Email;

9 d. At trial, Switzer's counsel proposed a jury instruction on false representation, and
10 when the court asked what evidence there was of false representation, counsel for
11 Switzer said, "And then also the - - the representations that were made by Ms. Weide
12 in all those e-mails that I was reading off";

13 e. Switzer's counsel did not request a jury instruction for defamation, disparagement,
14 libel, or slander – instead, the requested jury instruction was listed under Switzer's
15 fraud cause of action, not economic interference; and

16 f. The instructions actually given to the jury concerned Switzer's claims for
17 concealment and false representation for statements made by Wood or his agents *to*
18 *Switzer*, not to third parties regarding the reputation of Switzer. For instance:

19 i. The jury instruction for "concealment" for the benefit of Flournoy read,
20 "Flournoy must prove . . . [that] Mr. Wood intentionally failed to disclose
21 certain facts *to Flournoy* and Flournoy's non-managing member Mr.
22 Switzer"; and

23 ii. The jury instruction for "intentional misrepresentation" reads, "Mr.
24 Switzer claims that Mr. Wood made a false representation that harmed him.
25 To establish this claim, Mr. Switzer must prove . . . [t]hat Mr. Wood intended
26 *that Mr. Switzer* rely on the representation."

27 24. The Court reiterated and confirmed the limited scope of this case in the MSJ Order, stating:
28 "The limited focus of this litigation is *whether the newly discovered evidence which came to light*

1 after the district court granted summary judgment in the Coverage Action would have triggered a
2 duty to defend and, if so, whether Defendant acted in bad faith by denying the re-tenders.” ECF No.
3 315 at 12:4-8 (emphasis added).

4 25. This Court has already determined that Nautilus’s duty to defend was triggered on July
5 28, 2017, when Plaintiffs submitted the first re-tender with new information. ECF No. 315.
6 Accordingly, prior to July 28, 2017, Nautilus had no duty to defend Plaintiffs in the *Switzer*
7 Action. See *Id.* at 38:17-19. (“Prior to learning the Weide Email was false, [Nautilus] had no
8 duty to defend and, consequently, no duty to attempt to settle the *Switzer* Action.”).

9 26. The Ninth Circuit applied the Nevada Supreme Court’s reimbursement test articulated
10 in *Nautilus Ins. Co. v. Access Medical, LLC*, 137 Nev. 96, 102. 482 P.3d 683, 689 (2021) to these
11 specific facts and concluded that Nautilus expressly reserved its right to seek reimbursement
12 in writing after the defense was tendered and the policyholder accepted the defense from the
13 insurer.⁸ See Ninth Circuit’s Memorandum filed August 9, 2021, ECF No. 149, at p. 3, *Nautilus*
14 *Ins. Co. v. Access Medical, LLC*, Case No. 2-15-cv-00321-JAD-BNW.

15 27. Nautilus assigned the law firm of Wolfe & Wyman LLP as defense counsel for Plaintiffs
16 in the *Switzer* Action. Wolfe & Wyman billed at the rate of \$170 per hour. Nautilus paid Wolfe
17 & Wyman LLP approximately \$89,924.54 from February 25, 2015 until they were replaced as
18 defense counsel for work in the *Switzer* Action. Plaintiffs did not reject Nautilus’s assignment
19 of Wolfe & Wyman LLC as defense counsel and Nautilus’s payment of defense costs billed by
20 Wolfe & Wyman.

21 28. In or about April 2016, Nautilus replaced Wolfe & Wyman LLP with the law firm of
22 Gordon Rees Scully Mansukhani LLP (“Gordon Rees”) as defense counsel for Plaintiffs.
23 Gordon Rees billed at rates slightly higher than Wolfe & Wyman LLP, or approximately \$265
24 per hour. Nautilus paid Gordon Rees approximately \$425,546.77 for work in the *Switzer* Action
25 through July 27, 2017. Plaintiffs did not reject Nautilus’s assignment of Gordon Rees and
26 Nautilus’s payment of Gordon Rees’ fees and costs.

27
28 ⁸ Although the Ninth Circuit’s decision was in the Coverage Action, the Ninth Circuit evaluated the very same reservation of rights letters and Plaintiffs actions in accepting defense in the *Switzer* Action. As such, law of the case principles apply.

29. Gordon Rees continued on as Plaintiffs' defense counsel through trial.

30. Nautilus advised Plaintiffs that Nautilus had identified a potential conflict of interest with respect to its reserved rights; therefore, Nautilus offered Plaintiffs the option of selecting independent counsel at Nautilus's expense.

31. Plaintiffs selected the law firm of Wild, Carter & Tipton to be their independent counsel. Nautilus paid Wild, Carter & Tipton the rate of \$170 per hour. Nautilus paid Wild, Carter & Tipton approximately \$129,261.91 for work in the *Switzer* Action through July 27, 2017. Plaintiffs did not object to Wild, Carter & Tipton as independent counsel and Plaintiffs did not object to Nautilus's payment of independent counsel's invoices.

32. Wild, Carter & Tipton continued on as Plaintiffs' counsel through trial.

33. Between February 25, 2015 and July 27, 2017, Nautilus paid the following third-party vendor costs directly for the defense of Plaintiffs in the *Switzer* Action:

- a. Hemming Morse LLP, Forensic Accountant, \$197,024.22
- b. Dowling Aaron Incorporated, Discovery Facilitator, \$2,960.00
- c. JAMS, Inc., Mediation, \$1,500
- d. LA Best Color Imaging, Printing Services, \$2,869.63
- e. Berkley Court Reporters Inc., Court Reporter, \$21,980.89
- f. Aptus Court Reporting, Court Reporter, \$1,294.84
- g. Wood & Randall, Expert Services, \$1,120.20
- h. Sean D. Early MD, Expert Services, \$2,250.00
- i. OFY Travel & Tours Inc., Travel Services, \$1,011.95

34. In or about June 2014, Nautilus assigned the law firm Hall Hieatt & Connely LLP ("Hall Hieatt") as defense counsel for Flournoy Management, LLC in the *Switzer* Action. Hall Hieatt billed at a rate of \$160 per hour or less. Nautilus paid Hall Hieatt approximately \$127,224.07 for work performed in the *Switzer* Action between February 25, 2015 – July 27, 2017. Flournoy Management, LLC did not object to Nautilus's assignment of Hall Hieatt as defense counsel and Nautilus's payment of Hall Hieatt's invoices.

35. Flournoy Management, LLC selected the Law Office of Amy R. Lovegren-Tipton to be its independent counsel. Nautilus paid the Law Office of Amy R. Lovegren-Tipton approximately \$19,804.00 for work in the *Switzer* Action. Flournoy did not reject Nautilus's payment of independent counsel's fees and costs.

36. Between February 25, 2015 and July 27, 2017, Nautilus paid the following third-party vendor directly for costs incurred for the defense of Flournoy Management, LLC in the *Switzer* Action:

a. Berkley Court Reporters Inc., Court Reporter, \$4,817.86

V. ISSUES OF LAW

The following are the issues of law to be tried and determined at trial.

A. Plaintiffs' Issues Of Law:

Plaintiff incorporates the legal arguments and factual issues set forth in its operative complaint and opposing summary judgment briefings, [274: 1-15 and 281;1-16]. Plaintiff anticipates the following items will be of particular importance during the trial:

1. "A primary insurer's right and duty to defend... carries with it the duty to communicate to the insured any reasonable settlement offer that could affect the insured's interest." *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309, 212 P.3d 318, 325 (2009).
2. In Nevada, "a primary insurer's exercise of its right and duty to defend includes settlement duties and an insurer must give equal consideration to the insured's interest." *Allstate v. Miller*, 212 P.2d 318, 323 (Nev. 2009). Particularly important to this case, the *Allstate* Court held:

The duty to defend contains two potentially conflicting rights: the insurer's right to control settlement discussions and its right to control litigation against the insured. 14 Couch on Insurance 3d §§ 200:1, 203:1 (2005). Each of these contractual rights creates additional duties for the insurer. The right to control settlement discussions creates the duty of good faith and fair dealing during negotiations. See Couch, *supra*, § 203:1 (stating that the insurer's right to control settlement negotiations may create a conflict of interest between the insurer and the insured, and therefore, the insurer must act in good faith and give the insured's interests equal consideration with its own).

Id. at 324-325. (citations added).

1 The *Allstate* court went on to cite two cases with approval that set forth factors in
 2 determining whether an insurer's settlement actions were reasonable: 1) the insurer must give the
 3 interests of the insured at least as much consideration as it gives to its own interests," and (2) the
 4 insurer must act as "a prudent insurer without policy limits. *Id.* at 326 citing *Archdale v. American*
 5 *International Specialty Lines*, 154 Cal.App.4th 449, 64 Cal.Rptr.3d 632 (2007).

6 The Allstate Court also approved of the following additional factors:

7 (1) the probability of the insured's liability; (2) the adequacy of the
 8 insurer's investigation of the claim; (3) the extent of damages
 9 recoverable in excess of policy coverage; (4) the rejection of offers
 10 in settlement after trial; (5) the extent of the insured's exposure as
 compared to that of the insurer; and (6) the nondisclosure of relevant
 factors by the insured or insurer.

11 *Id.* at 327 citing *Fertitta v. Allstate Ins. Co.*, 439 So.2d 531, 533. (La.Ct.App.1983).

12 3. "[A]n insurer's 'good faith,' though erroneous, belief in noncoverage affords no defense to
 13 liability flowing from the insurer's refusal to accept a reasonable settlement offer." *Johansen*
 14 *v. California State Auto. Assn. Inter-Ins. Bureau*, 15 Cal. 3d 9, 16 (1975).

15 In *Johansen*, the Court found held:

16 whenever it is likely that the judgment against the insured will exceed
 17 policy limits 'so that the most reasonable manner of disposing of the
 18 claim is a settlement which can be made within those limits, a
 consideration in good faith of the insured's interest requires the insurer
 to settle the claim.

19 *Id.* at 16.

20 Further, and directly on point to the instant matter, the Court held:

21 Moreover, in deciding whether or not to compromise the claim, the
 22 insurer must conduct itself as though it alone were liable for the entire
 23 amount of the judgment. Thus, the only permissible consideration in
 24 evaluating the reasonableness of the settlement offer becomes whether,
 25 in light of the victim's injuries and the probable liability of the insured,
 26 and ultimate judgment is likely to exceed the amount of the settlement
 offer. Such factors as the limits imposed by the policy, a desire to reduce
 27 the amount of future settlements, or a belief that the policy does not
 provide coverage, should not affect a decision as to whether the
 settlement offer in question is a reasonable one.

28 *Id.* at 16 (citations omitted)(emphasis added).

- 1 4. “The right to recover consequential damages sustained as a result of an insurer’s breach of
2 the duty to defend [which includes the duty to settle] does not require proof of bad faith...
3 [E]ven in the absence of bad faith, the insurer may be liable for a judgment that exceeds the
4 policy limits if the judgment is consequential to the insurer’s breach.” *Century Sur. Co. v.*
5 *Andrew*, 134 Nev. 819, 826, 432 P.3d 180, 186 (2018)
- 6 5. When there’s a duty to defend, the insurer must defend its insureds in a reasonable manner.
7 *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 311-12, 212 P.3d 318, 326 (2009).
- 8 6. Nevada law “requires insurers to fulfill their duty to defend by allowing insureds to select
9 their own counsel and paying the reasonable costs for the independent counsel’s
10 representation.” *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Op. 74, 357 P.3d
11 338, 341 (2015).
- 12 7. **Whether the duties required when the duty to defend exists (such as settlement duties)**
13 **also applies when an insurer exercises its *right* to defend. *Allstate Ins. Co. v. Miller*, 125**
14 **Nev. 300, 309, 212 P.3d 318, 325 (2009).**
- 15 8. When determining bad faith, the fact finder may consider conduct including: (1) the
16 reasonableness of the insurer’s investigation of the claim; (2) the reasonableness of an
17 insurer’s evaluation of the claim; and (3) the reasonableness of the insurer’s communication
18 with the insured. *American Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 102 Nev. 601, 604,
19 729 P.2d 1352 (1986); *Ainsworth*, 104 Nev. at 592; *Powers*, 114 Nev. 690.
- 20 9. The insurer must conduct a prompt and thorough investigation into the facts of the underlying
21 action that extends beyond the complaint to ascertain whether it had a duty to defend the
22 insureds. *Century*, at 183; see *Frontier Ins. Co.*, 99 P.3d at 1158.
- 23 10. **“The protections of NRS 686A.310 are broader than the tort of bad faith and extend to**
24 **the processing of the claim.” *Williams v. Am. Fam. Mut. Ins. Co.*, 2012 WL 1574825, at**
25 ***4 (D. Nev. May 2, 2012) (citing *Hart v. Prudential Prop. & Cas. Ins. Co.*, 848 F. Supp.**
26 **900, 903 (D. Nev. 1994)).*Id.***
- 27 11. **Whether an insurer can delay creating the duty to defend by failing to conduct a**
28 **thorough and complete investigation of a claim.**
12. **Whether Nautilus is not entitled to reimbursement when there was not a determination**

1 that there was “never a duty to defend.” The exact opposite happened in this case as the
 2 Court determined a duty to defend did exist.

3 **13. Whether Nautilus is entitled to reimbursement after November 9, 2016, when Wood and**
 4 **Access sent a letter indicating it was rejecting the defense under the condition that**
 5 **Nautilus would be reimbursed for defense costs. Importantly, this letter was not in**
 6 **evidence in the first case because this was after the relevant time period considered in**
 7 ***Nautilus I*.**

8 **14. Whether the Nevada Supreme Court’s decision applies to independent counsel fees as**
 9 **those are not defense costs but, rather, are required due to conflicts of interest.**

10
 11 **B. Defendants’ Issues Of Law:⁹**

12 *1. Whether There Was A Breach Of Duty To Pay Reasonable Costs For Independent*
 13 *Counsel:*

14 *Nautilus paid the Insureds’ independent counsel a reasonable rate consistent with Nevada*
 15 *law.*

16 “[W]hen an insurer provides counsel to defend its insured, a conflict of interest may arise
 17 because the outcome of litigation may also decide the outcome of a coverage determination—a
 18 determination that may pit the insured’s interest against the insurer’s.” *State Farm Mut. Auto. Ins.*
 19 *Co. v. Hansen*, 357 P.3d 338, 340 (Nev. 2015). “Where the clients’ interests conflict, the rules of
 20 professional conduct prevent the same lawyer from representing both clients.” *Id.* at 341. In such a
 21 situation, “Nevada law requires the insurer to satisfy its contractual duty to provide representation by
 22 permitting the insured to select independent counsel and by paying the reasonable costs of such
 23 counsel.” *Id.*

24 In articulating this rule, the Nevada Supreme Court adopted the rule established by *San Diego*
 25 *Navy Federal Credit Union v. Cumis Insurance Society, Inc.*, 162 Cal.App.3d 358 (4th Dist. 1984),
 26

27 ⁹ Nautilus objects to Plaintiffs’ adding Issues of Law 7, 10, and 11 to this Amended Joint Pretrial
 28 Order on the grounds that any amendment is limited to addressing Nautilus’s reimbursement
 counterclaims, not to raise new arguments and issues of law on Plaintiffs’ claims that were not
 originally included in the Joint Pretrial Order.

1 construing the so-called “*Cumis* rule” as requiring “insurers to fulfill their duty to defend by allowing
 2 insureds to select their own counsel and paying the reasonable costs for the independent counsel’s
 3 representation.” *Hansen*, 357 P.3d at 341. Post-*Cumis*, California codified its standard in Civil Code
 4 § 2860(c). Section 2860(c) does not cap attorneys’ fees, but rather limits the insurer’s obligation “to
 5 the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of
 6 business in the defense of similar actions in the community where the claim arose or is being
 7 defended.”

8 2. *If There Was A Duty To Defend, Whether Nautilus Has A Duty To Pay The Judgment In The*
 9 *Switzer Action:*

10 Even though this Court’s determined that Nautilus breached the contract, Nautilus is not liable
 11 for the judgment in the *Switzer* Action because the breach of contract did not cause the excess
 12 judgment. Rather, the judgment ordered in the *Switzer* Action is directly attributable to the Insureds’
 13 own fraudulent conduct and was in no way related to Nautilus’s determination regarding the duty to
 14 defend or Nautilus’s failure to pay defense costs post August 1, 2017.

15 “[A]n insurer’s liability where it breaches its contractual duty to defend is not capped at the
 16 policy limits plus the insured’s defense costs, and instead, an insurer may be liable for any
 17 consequential damages caused by its breach. *Andrew, supra*, 134 Nev. at 820. “The determination
 18 of the insurer’s liability depends on the unique facts of each case and is one that is left to the jury’s
 19 determination.” *Id.* at 825 (citation omitted). “The right to recover consequential damages sustained
 20 as a result of an insurer’s breach of the duty to defend does not require proof of bad faith.” *Id.* at
 21 826.

22 However, the Nevada Supreme Court has made clear “that an entire judgment is [not]
 23 automatically a consequence of an insurer’s breach of its duty to defend; rather, *the insured is tasked*
 24 *with showing that the breach caused the excess judgment* and “is obligated to take all reasonable
 25 means to protect himself and mitigate his damages.” *Id.* (emphasis added).

26 3. *If There Was A Duty To Defend, Whether There Was A Genuine Dispute Regarding*
 27 *Coverage:*
 28

1 *Even if the Court’s determination stands that Nautilus breached the contract, Nautilus did*
 2 *not act in “bad faith” because there was a genuine dispute regarding coverage and Nautilus did not*
 3 *knowingly and/or recklessly act unreasonable in its consideration of the re-tenders.*

4 “Although every contract contains an implied covenant of good faith and fair dealing, an action
 5 in tort for breach of the covenant arises only ‘in rare and exceptional cases’ when there is a special
 6 relationship between the victim and tortfeasor.” *Ins. Co. of the West v. Gibson Title Co., Inc.*, 137 P.3d
 7 698, 702 (Nev. 2006); *see also Allstate Ins. Co. v. Miller*, 212 P.3d 318, 324 (Nev. 2009) (explaining
 8 that Nevada law, not the insurance policy, imposes obligations on insurers under the implied covenant
 9 of good faith and fair dealing). The relationship between an insurer and its insureds is one such special
 10 relationship. *Ins. Co. of the West*, 137 P.3d at 702.

11 “A violation of the covenant gives rise to a bad-faith tort claim.” *Allstate*, 212 P.3d at 324. “To
 12 prevail on such a claim, a plaintiff must allege that (1) an insurer-insured relationship exists; (2) the
 13 insurer breached its duty by refusing to defend or indemnify its insureds for a loss covered by the
 14 policy; (3) the denial is without proper cause, meaning the insurer has an ‘actual or implied awareness
 15 of the absence of a reasonable basis for denying the benefits of the policy.’” *Ariz. Civil Constructors,*
 16 *Inc. v. Colony Ins. Co.*, 481 F.Supp.3d 1141, 1151 (D. Nev. 2020) (quoting *Am. Excess Ins. Co. v.*
 17 *MGM*, 729 P.2d 1352, 1354-55 (Nev. 1986)). In other words, “[b]ad faith is established where the
 18 insurer acts unreasonably and with knowledge that there is no reasonable basis for its conduct.” *Guar.*
 19 *Nat’l Ins. Co. v. Potter*, 912 P.2d 267, 272 (Nev. 1996). “It is not enough to show that, in hindsight,
 20 an insurer acted unreasonably; *the plaintiff must show that the insurer knew or recklessly disregarded*
 21 *that it was acting unreasonably.*” *Fernandez v. State Farm Mut. Auto. Ins. Co.*, 338 F.Supp.3d 1193,
 22 1200 (D. Nev. 2018) (emphasis added).

23 5. *Whether Nautilus Violated Any Of The Regulatory Duties Of An Insurer In Nevada:*

24 *Regardless of whether Nautilus breached the contract, Nautilus did not commit unfair claims*
 25 *practices in violation of NRS § 686A.310 because Nautilus acted reasonably and fairly in its*
 26 *consideration of the Insureds’ re-tenders.*

27 Under Nevada law, when an insurer has not acted unreasonably or unfairly in the handling of
 28 the claim, the requirement to support a claim for unfair claims practices has not been met. *See Igartua*
v. Mid-Century Ins. Co., 262 F. Supp. 3d 1050 (D. Nev. 2017).

6. **Whether Nautilus is Entitled to Reimbursement of Defense Costs Nautilus Paid on Behalf of Its Insured in the Switzer Action From February 25, 2015 through July 27, 2017:**

In *Nautilus Insurance Company v. Access Medical, LLC, et al.*, 137 Nev. 96, 482 P.3d 683 (2021), the Nevada Supreme Court held that unjust enrichment underpins an insurer's right to reimbursement of defense costs paid under a reservation of rights where 1) a court determines that an insurer never owed a duty to defend, 2) the insurer expressly reserved its rights to seek reimbursement in writing after a defense was tendered, and 3) the policyholder accepted the defense from the insured. *Id.* at 101-02, 482 P.3d at 688-89 (rejecting that the insurance policy, a contract, underpins reimbursement because the contract is not implicated where there is no coverage for a claim). The Nevada Supreme Court held that where a court finally determines that an insurer does not owe a defense under its policy, yet the insurer pays for such defense under a reservation of rights when it had no obligation to do so, then equity demands that the policyholder reimburse its insurer. *Id.* at 102, 482 P.3d at 689. Equity was at the forefront of the Nevada Supreme Court's decision based, in part, on the fact that Nevada law "more forcefully encourages insurers to offer to defend doubtful claims," thus "it is only fair to permit those insurers to recover costs they never agreed to bear." *Id.* at 103, 482 P.3d at 690. Furthermore, in the appeal of the Coverage Action, the Ninth Circuit held that whether an insurer's duty to defend is triggered at a later time does not undermine the Nevada Supreme Court's rationale that an insurer may obtain reimbursement of defense costs paid when the policy did not require that the insurer pay in the first instance, which is the case here.

VI. EXHIBITS

The following is a joint exhibit list proposed by Plaintiffs. By providing this list, neither party is waiving any rights to object to any particular exhibits or to add to this exhibit list as necessary nor is either party waiving any rights to object to such changes. Moreover, Defendant makes a blanket objection to any exhibit that includes evidence which goes beyond the scope of this case as defined by Court.

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
SWITZER CALIFORNIA CASE PLEADINGS				
1.	Ted Switzer's original	ACCESS 00001 –		

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Complaint against Flournoy dated December 27, 2011	00007		
2.	Ted Switzer's Cross-Complaint in the <i>Switzer</i> Action, filed June 3, 2013	NIC-000053 – 000111	Plaintiff believes the unrelated parties and causes of action should be redacted as irrelevant and unduly prejudicial	Plaintiff
3.	Judgment from the <i>Switzer</i> Action	ACCESS 00106 – 00136		
4.	Notice of Entry of Judgment in the <i>Switzer</i> Action	ACCESS 00137 – 00139		
5.	Court Minutes regarding Mr. Switzer's Motion to Tax Costs from the <i>Switzer</i> Action	ACCESS 00140 – 00146		
6.	Order from the California Appellate Court re: <i>Switzer</i> Action	ACCESS 00182 – 00207	Relevance; foundation; as well as any other reason set forth within the Federal Rules of Evidence ("FRE")	Defendant
7.	Writ of Execution to Wood due to the Judgment in the <i>Switzer</i> Action	ACCESS 00208 – 00212	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
8.	Clerk's Certificate of Mailing, Law and Motion Minute Order, and Tentative Ruling	ACCESS 00213 – 00219	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
9.	Final Statement of Decision and Judgment	ACCESS 00890-00912		

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	on Special Verdict – Modified After Appeal from <i>Ted Switzer v. Flournoy Management, LLC, et. al</i>			
10.	Verdict from <i>Switzer</i> Action	ACCESS 01144-01177		
11.	Notice of Appeal from <i>Switzer</i> Action	ACCESS 01178-01184		
DEPOSITIONS AND TRANSCRIPTS FROM SWITZER CALIFORNIA CASE				
12.	Excerpt of Trial Testimony of Mr. Carrigan	ACCESS 00095 – 00096		
13.	Mr. Switzer’s attorney probing jurors in the <i>Switzer</i> Action regarding possible defamatory claims	ACCESS 00179-00181		
14.	Excerpt of the Theodore Switzer Deposition Testimony Related to the First Re-Tender	ECF No. 269-15		
15.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Theodore Switzer Part 1	SWITZER THEODORE SWITZER DEPO 000001-000266	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
16.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Theodore Switzer Part 2	SWITZER THEODORE SWITZER DEPO 000001-000185	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
17.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Dixie Switzer Part 1	SWITZER DIXIE SWITZER DEPO 000001-000342	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
18.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Dixie Switzer Part 2	SWITZER DIXIE SWITZER DEPO 000001-000122	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
19.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Jacqueline Weide Part 1	SWITZER WEIDE PART 1 000001- 000252	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
20.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Jacqueline Weide Part 2	SWITZER WEIDE PART 2 000001- 000177	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
21.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Jacqueline Weide Part 3	SWITZER WEIDE PART 3 000001- 000130	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
22.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Robert Clark Wood II Part 1	SWITZER WOOD DEPO PART 1 000001-000188	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
23.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Robert Clark Wood II Part 2	SWITZER WOOD DEPO PART 2 000001-000099	Relevance; foundation; overbroad; as well as any other reason set forth within the	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			FRE	
24.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Robert Clark Wood II Part 3	SWITZER WOOD DEPO PART 3 000001-000161	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
25.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Robert Clark Wood II Part 4	SWITZER WOOD DEPO PART 4 000001-000110	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
26.	Excerpt of Trial Testimony of Dixie Switzer	ACCESS 00093 - 00094		
27.	Deposition Transcript in <i>Switzer v. Flournoy</i> of Robert Clark Wood II Part 5	SWITZER WOOD DEPO PART 5 000001-000104	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Defendant
28.	Excerpt of the Dixie Switzer Deposition Testimony Related to the First Re-Tender	ECF No. 269-17		
29.	Excerpt of Trial Testimony of Jacqueline Weide	ACCESS 00084 – 00090		
30.	Excerpt of the Jacqueline Weide Deposition Testimony Related to the First Re-Tender	ECF No. 269-18		
31.	Excerpt of the First Day Trial Transcript in the <i>Switzer</i> Action, Including Voir Dire, dated August 23, 2017, Relating to the Second Re-Tender	Nautilus-AccessRe-Tender2-00005 - 00119		

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
32.	Excerpt of Dixie Switzer's Trial Testimony in the Switzer Action Relating to the Third Re-Tender	ACCESS 00093 - 00094		
33.	Excerpt of Jacqueline Weide's Trial Testimony in the <i>Switzer</i> Action Relating to the Fourth Re-Tender	ACCESS 00084 – 00090		
34.	Excerpt of Ted Switzer's Trial Testimony in the <i>Switzer</i> Action Relating to the Fourth Re-Tender	ACCESS 00091 – 00092		
35.	Excerpt of the Trial Transcript in the <i>Switzer</i> Action Regarding Jury Instructions, Relating to the Fourth Re-Tender	ACCESS 00095 – 00096		
NAUTILUS POLICY				
36.	Nautilus Insurance Policy	ACCESS 00010 – 00060		
WEIDE EMAIL				
37.	Email from Jacquie Weide dated July 25, 2011, to Deborah Fanning advising Cottage Hospital Access was interested in providing spinal implants to this facility	ACCESS 00008 – 00009		
CORRESPONDENCE IN CHRONOLOGICAL ORDER				
38.	Letter dated April 28, 2011, Related to the First Re-Tender	ECF No. 269-16	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
39.	Nautilus's letter to the Insureds dated January 8, 2014	ACCESS 00061 – 00063	Relevance; foundation; impermissible hearsay; as	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			well as any other reason set forth within the FRE	
40.	Email Correspondence re: Switzer v. Flournoy & Sonny Wood dated January 8, 2014-February 20, 2014	ACCESS 01035-01059	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
41.	Letter from Kravitz, Schnitzer & Johnson, Chtd. to Selman Breitman, LLP dated January 14, 2014	ACCESS 01007 – 01010	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
42.	Email dated January 23, 2014	ACCESS 00065 – 00066	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
43.	Correspondence from Flournoy's counsel dated February 7, 2014	ACCESS 00067	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
44.	Nautilus's correspondence dated February 10, 2014	ACCESS 00068	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			FRE	
45.	Correspondence from Flounoy's counsel dated February 18, 2014	ACCESS 00069	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
46.	Electronic correspondence from Nautilus dated February 20, 2014	ACCESS 00070	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
47.	Correspondence from Access Medical, LLC dated February 20, 2014	ACCESS 00071	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
48.	Correspondence from Nautilus dated February 21, 2014	ACCESS 00072	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
49.	Correspondence from Access Medical, LLC dated February 24, 2014	ACCESS 00073	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
50.	Correspondence from	ACCESS 00074	Relevance;	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Access Medical dated February 25, 2014		foundation; impermissible hearsay; as well as any other reason set forth within the FRE	
51.	Letter from Nautilus dated March 5, 2014	ACCESS 00075 – 00083	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
52.	Letter from Selman Breitman, LLP to Jordan P. Schnitzer dated March 5, 2014	ACCESS 01026 - 01034	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
53.	Letter from Kravitz, Schnitzer & Johnson, Chtd. to Selman Breitman, LLP dated March 17, 2014	ACCESS 00999 - 01003	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
54.	Email Correspondence re: Switzer v. Flournoy & Sonny Wood dated March 25, 2014-May 27, 2014	ACCESS 01060 – 01140	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
55.	Email correspondence dated March 25, 2014 wherein Nautilus accepted defense	ACCESS 00064	Relevance; foundation; impermissible hearsay; as well as any other reason set forth	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			within the FRE	
56.	Nautilus's reservation of rights letter to the Insureds, dated May 14, 2014	NIC-000213 – 000226	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
57.	Nautilus's reservation of rights letter to the Insureds, dated October 2, 2014	NIC-000228 – 000241	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
58.	Letter from Nautilus Insurance Group to Access Medical, LLC dated October 2, 2014	ACCESS 01011 - 01025	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
59.	Nautilus's reservation of rights letter to Flournoy Management, Inc., dated October 17, 2014	NIC-000243 - 000255	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
60.	Correspondence from Nautilus Insurance re cumis counsel rates dated October 17, 2014	ACCESS 01222-01235	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
61.	Nautilus's letter to the Insureds' counsel, dated January 16, 2015	ACCESS 01195-01196	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
62.	Nautilus's letter to Insureds' counsel dated January 19, 2015	ACCESS 01197	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
63.	Insureds' counsel letter to Nautilus dated June 26, 2015	ACCESS 01198-01199	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
64.	Correspondence between Gordon Rees Scully Mansukhani, LLP ("Gordon & Rees") and Nautilus from September 2016	ACCESS 00147 - 00167	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
65.	Letter from Nautilus dated November 7, 2016 sent to the Insureds	ACCESS 01245-01246	Duplicative	Defendant
66.	Nautilus's letter to the Insureds' counsel, dated November 7, 2016	ECF No. 269-12 / ACCESS 00097	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
67.	Correspondence between Gordon & Rees and Nautilus from April 6, 2017	ACCESS 00168 - 00171	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
68.	Correspondence to Nautilus on May 9, 2017	ACCESS 00103 - 00105	Relevance; foundation; overbroad; as well as any	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			other reason set forth within the FRE	
69.	Letter from Kravitz, Schnitzer & Johnson, Chtd. to Selman Breitman, LLP dated May 19, 2017	ACCESS 01004	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
70.	Nautilus's letter to the Insureds' counsel, dated July 6, 2017	ECF NO. 269-13 / ACCESS 00098 - 00099	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
71.	Letter from Kravitz, Schnitzer & Johnson, Chtd. to Selman Breitman, LLP dated July 18, 2017	ACCESS 01005 - 01006	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
72.	Nautilus's letter to Insureds' counsel, dated July 26, 2017	ACCESS 01200-01203	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
73.	Insureds' counsel letter to Nautilus dated July 28, 2017	ACCESS 01204-01206	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
74.	The Insureds' First Re-Tender Correspondence to Nautilus, dated July	Nautilus-AccessRe-Tender1-00002 - 00004	Relevance; foundation; overbroad; as	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	28, 2017		well as any other reason set forth within the FRE	
75.	Email correspondence between Jordan P. Schnitzer and Nautilus Insurance from July 31, 2017, through August 9, 2017, re Demand for Re-Tender and Defense	ACCESS 01236-01243	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
76.	Nautilus's letter to Insureds' counsel, dated August 10, 2017	ACCESS 01207-01212	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
77.	Nautilus's Letter to the Insureds, dated August 10, 2017, Denying Coverage for the First Re-Tender	ECF No. 269-19	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
78.	Insureds' counsel letter to Nautilus dated August 23, 2017	Access 01213-01214	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
79.	The Insureds' Second Re-Tender Correspondence to Nautilus, dated August 24, 2017	Nautilus-AccessRe-Tender2-00121 – 00123	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
80.	Nautilus's letter to Insureds counsel dated	ACCESS 01215-01217	Relevance; foundation;	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	August 31, 2017		overbroad; as well as any other reason set forth within the FRE	
81.	Nautilus's Letter to the Insureds, dated August 31, 2017, Denying Coverage for the Second Re-Tender	Nautilus-AccessRe-Tender2-00138 – 00140	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
82.	The Insureds' Third Re-Tender Correspondence to Nautilus, dated September 19, 2017	Nautilus-AccessRe-Tender3-00010	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
83.	Nautilus's Letter to the Insureds, dated September 26, 2017, Denying Coverage for the Third Re-Tender	Nautilus-AccessRe-Tender3-00004 – 00006	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
84.	The Insureds' Fourth Re-Tender Correspondence to Nautilus, dated September 27, 2017	Nautilus-AccessRe-Tender4-00002 – 00003	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
85.	Correspondence to Nautilus on September 27, 2017	ACCESS 00102	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
86.	The Insureds'	Nautilus-AccessRe-	Relevance;	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Supplemental Re-Tender Correspondence, dated October 2, 2017, Related to the Fourth Re-Tender	Tender4-00014 - 00016	foundation; overbroad; as well as any other reason set forth within the FRE	
87.	Email correspondence from Jordan P. Schnitzer on October 2, 2017 re Demand for Re-Tender and Defense	ACCESS 01244	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
88.	Nautilus's Letter to the Insureds, dated October 10, 2017, Denying Coverage for the Fourth Re-Tender	Nautilus-AccessRe-Tender4-00024 – 00027	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
89.	Nautilus's letter to Insureds counsel dated October 26, 2017	ACCESS 01218-01219	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
90.	Nautilus's Supplemental Letter to the Insureds, dated October 26, 2017, Further Denying Coverage for the Fourth Re-Tender	Nautilus-AccessRe-Tender4-00029 – 00030	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
91.	Correspondence from L. Renee Green re November 7, 2016 Letter dated November 9, 2016	ACCESS 01220-01221	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
92.	Letter from Selman Breitman, LLP to Kravitz, Schnitzer & Johnson, Chtd. re Supplement to Production 07.19.19	ACCESS 00220 – 00232	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
93.	Nautilus's letter to Insureds counsel dated January 2, 2020. re: Depositions of Dan Curran and April Williams	ACCESS 01186-01189	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
94.	Correspondence from Gregory Altounian regarding global settlement demand dated January 9, 2020	ACCESS 01141 - 01143	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
95.	Letter from Selman Breitman to Jordan Schnitzer Settlement Communication dated February 12, 2020.	ACCESS 01185		
96.	CONFIDENTIAL Letter from Nautilus dated February 12, 2020, re settlement communication	ACCESS 01247	Privileged; Confidential Settlement Communication; as well as any other reason set forth within the FRE	Defendant
97.	Letter from Jordan P. Schnitzer on March 20, 2020. re response to February 12, 2020, letter from Nautilus re settlement communication	ACCESS 01248-01250	Privileged; Confidential Settlement Communication; as well as any other reason set forth within the FRE	Defendant
98.	Letter from Selman	ACCESS 00233 –	Privileged;	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Breitman, LLC to Jordan P. Schnitzer on April 1, 2020, re: walk away offer	00236	Confidential Settlement Communication; as well as any other reason set forth within the FRE	
99.	Insureds counsel letter to Dan Curran dated June 11, 2020, re: Deposition	ACCESS 01190	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
100.	Insureds counsel letter to Nautilus dated July 28, 2020, re: 30(b)(6) Deposition Nautilus Insurance Group	ACCESS 01191	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
101.	Nautilus's letter to Insureds counsel dated August 17, 2020, re: 30(b)(6) Deposition Nautilus Insurance Group	ACCESS 01192-01194	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
102.	Correspondence from Linda K. Hsu re communication/documentation between Selman Breitman and Nautilus dated February 2, 2021	ACCESS 1252-1256	Relevance; as well as any other reason set forth within the FRE	Defendant
ATTORNEY INVOICES AND RETAINER AGREEMENTS				
103.	Invoices for attorney's fees	ACCESS 00237 – 00842	Relevance; foundation; overbroad; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
104.	Unsigned Attorneys' Fee Agreement	ACCESS 00843 - 00846	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
105.	Fees Hemming Morse, LLP billed for its services to the Insureds	ACCESS 00172 - 00178	Relevance; foundation; impermissible hearsay; as well as any other reason set forth within the FRE	Defendant
106.	Billing records of attorneys representing Plaintiffs in the <i>Switzer</i> Action	BILLING RECORDS 000001 – 000383	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
NAUTILUS PROCEDURES AND GUIDELINES				
107.	Nautilus Insurance Group Attorney Guidelines	ACCESS 00847 - 00855	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
108.	(Protected) previously disclosed in Nautilus Request for Production Responses	ACCESS WORK FLOW 1-145	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
109.	(Protected) previously disclosed in Nautilus Request for Production Responses	ACCESS WORK FLOW 146-208	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
EXPERTS				

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
110.	Stephen L. Strzelec Initial Expert Report dated January 7, 2021	EXPERT STRZELEC 000001-000070	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
111.	Stephen L. Strzelec CV, Testimony List, and Fee Schedule	STRZELEC 000001-000012	Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
112.	Stephen L. Strzelec Expert File Redactions to emails were made pursuant to FRCP 26b4C	STRZELEC FILE 000001-004415	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff/Defendant
113.	David B. Ezra Expert Report Dated January 8, 2021		Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
114.	David B. Ezra CV, Testimony List, and Fee Schedule		Relevance; foundation; overbroad; as well as any other reason set forth within the FRE	Plaintiff
115.	David B. Ezra Case File	NIC-DE 000001-001198	Relevance; foundation; overbroad; as well as any other reason	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			set forth within the FRE	
116.	30(b)(6) of Nautilus Insurance Company's Deposition Transcript on December 21, 2020		Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
117.	Exhibit 1	Notes from Deponent ACCESS 1251	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
118.	Exhibit 2	Notice of Deposition	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
119.	Exhibit 3	Documents that were reviewed for the Deposition by 30(b)(6) of Nautilus Insurance Company	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
120.	Exhibit 4	Nautilus Policy NIC 1-51	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			set forth within the FRE	
121.	Exhibit 5	Correspondence re cumis Counsel rates dated October 14, 2014 ACCESS 1222-1235	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
122.	Exhibit 6	Letter from Nautilus dated July 6, 2017 pulling coverage ACCESS 98-99	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
123.	Exhibit 7	Letter to Nautilus dated July 28, 2017 Nautilus-AccessRE-Tender 1 2-4	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
124.	Exhibit 8	Pre-Mediation Evaluation from Gordon & Rees dated September 23, 2016 ACCESS 150-167	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
125.	Exhibit 9	Email from Jacquie Weide dated July 25, 2011 to Deborah Fanning	Relevance; foundation; impermissible hearsay;	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
		ACCESS 8-9	overbroad; as well as any other reason set forth within the FRE	
126.	Exhibit 10	Letter from Nautilus's Counsel dated November 7, 2016, re coverage counsel ACCESS 1245-1246	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
127.	Exhibit 11	Claim Notes Nautilus-AccessRE-Tender4 31-33	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
128.	Exhibit 12	Letter to Nautilus re Re-tender defense Switzer Action dates July 28, 2017 ACCESS 1204-1206	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
129.	Exhibit 13	Excerpts of Jacqueline Weide's Deposition Volume 1, March 15, 2017 Nautilus-AccessRE-Tender1 14-19	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
130.	Exhibit 14	Excerpts of Theodore	Relevance;	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
		Switzer's Deposition Nautilus-AccessRe-Tender 1 12-13	foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	
131.	Exhibit 15	Email from John Phillips on August 4, 2017 Nautilus-AccessRe-Tender1 21	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
132.	Exhibit 16	Email to Nautilus on August 24, 2017 Nautilus-AccessRe-Tender2 121	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
133.	Exhibit 17	Email to Nautilus dates September 19, 2007 Nautilus-AccessRe-Tender3 10	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
134.	Exhibit 18	Excerpt of Trial testimony of Dixie Switzer ACCESS 93-94	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			within the FRE	
135.	Exhibit 19	Correspondence to Nautilus on September 27, 2017 ACCESS 102	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
136.	Exhibit 20	Excerpt of Trial Testimony of Theodore Switzer ACCESS 91-92	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
137.	Exhibit 21	Letter from Gregory Altounian dated January 9, 2020 ACCESS 1141-1143	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
138.	Exhibit 22	Letter from Nautilus re walk away offer on April 1, 2020 ACCESS 233-236	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Defendant
139.	Deposition Transcript of Robert "Sonny" Wood, II, taken December 23, 2020, and related exhibits			Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
140.	David B. Ezra's Deposition transcript held on May 11, 2021 including exhibits		Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff
141.	Exhibit 1	Initial Expert Report	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff
142.	Exhibit 2	David B. Ezra's CV	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff
143.	Exhibit 3	Berger Kahn website article Insurance Bad Faith		Plaintiff
144.	Exhibit 4	Berger Kahn website article Insurance Coverage		Plaintiff
145.	Exhibit 5	Article Mastering the Blue Ridge Settlement Reservation of Rights, Part 1		Plaintiff
146.	Exhibit 6	Article Mastering the Blue Ridge Settlement Reservation of Rights, Part 2		Plaintiff
147.	Exhibit 7	David B. Ezra Subpoena to Testify at Deposition	Relevance; foundation; impermissible	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			hearsay; overbroad; as well as any other reason set forth within the FRE	
148.	Exhibit 8	David B. Ezra File NIC_DE 1-1198	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff
149.	Exhibit 9	Affidavit of Service of Notice of Deposition and Subpoena Duces Tecum	Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE	Plaintiff
150.	Exhibit 10	Any Bills that were sent out by David B. Ezra in this case.		
151.	Stephen L. Strzelec Deposition transcript held on October 4, 2021			Plaintiff
152.	Exhibits from Stephen L. Strzelec's Deposition held on October 4, 2021			Plaintiff
MOTION-RELATED EXHIBITS				
153.	Access Medical LLC and Robert "Sonny" Wood, II's Index of Exhibits in Support of Their Reply to Nautilus Insurance Company's Opposition to the Insureds' Countermotion for Case	ECF 200 ACCESS 00913 - 00998	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Terminating Sanction (2 nd Request) Regarding Dan Curran from <i>Robert "Sonny" Wood, an individual; Access Medical, LLC v. Nautilus Insurance Company</i>			
154.	Exhibit 1	ECF 200-1 Affidavit of Robert D. Trzynka, Esq. in support of Plaintiffs Memorandum in Opposition to Motion to Present the Issue of Punitive Damages to the Jury ("Memorandum") in the Lillibridge v. Nautilus Ins. Co. matter, Case No. 4:2010ev04105 filed at the United States District Court for the District of South Dakota, Southern Division ("Lillibridge matter")	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
155.	Exhibit 2	ECF 200-2 Exh. C to Plaintiffs Memorandum in the Lillibridge matter consisting of excerpts from Nautilus's Best Practices Training manual	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
156.	Exhibit 3	ECF 200-3 Affidavit of Michael D. Bornitz, Esq. in support of Plaintiffs Motion to Compel Documents ("Motion to Compel") filed in the Lillibridge matter	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
157.	Exhibit 4	ECF 200-4 Exhibit N to Plaintiffs Motion to Compel in	Relevance; foundation; as well as any	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
		the Lillibridge matter consisting of excerpts from Nautilus's Best Practices Training manual	other reason set forth within the FRE	
158.	Exhibit 5	ECF 200-5 Exhibit HH to Plaintiffs Motion to Compel in the Lillibridge matter consisting of employee goals for one of Nautilus's employees	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
159.	Exhibit 6	ECF 200-6 Exhibit II to Plaintiffs Motion to Compel in the Lillibridge matter consisting of excerpts from Nautilus's Best Practices Training manual	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
160.	Exhibit 7	ECF No. 200-7 Exhibit JJ to Nautilus QA Training Documents in the Lillibridge matter consisting of excerpts from Nautilus's Best Practices Training manual	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
161.	Access Medical LLC and Robert "Sonny" Wood, II's Index of Exhibits in Support of Plaintiffs' Motion for Partial Summary Judgment on Second Amended Complaint from <i>Robert "Sonny" Wood, an individual; Access Medical, LLC v. Nautilus Insurance Company</i>	ECF No. 301-2	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
162.	Exhibit 1	ECF No. 281-3 Deposition Transcript of Nautilus' 30b6 Deponent.	Relevance; foundation; as well as any other reason set forth	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			within the FRE	
163.	Exhibit 2	ECF No. 281-4 Expert Report of Steve Strzelec	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
164.	Exhibit 3	ECF No. 281-5 Declaration of Linda Wendell Hsu	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
165.	Exhibit 4	ECF No. 281-6 Billing records for Gordon Rees	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
166.	Exhibit 5	ECF No. 281-7 Invoice from independent counsel for the Insureds, Access Bates No. 00716-719	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
167.	Exhibit 6	ECF No. 281-8 July 18, 2017 Letter	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
168.	Exhibit 7	ECF No. 281-9 Deposition Transcript of Robert "Sonny" Wood, II.	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
169.	Exhibit 8	ECF No. 281-10 July 26, 2017 Letter	Relevance; foundation; as well as any	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
			other reason set forth within the FRE	
170.	Exhibit 9	ECF No. 281-11 Mediation Report	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
171.	Exhibit 10	ECF No. 281-12 Nautilus' claim note dated February 23, 2017	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
172.	Exhibit 11	ECF No. 281-13 Nautilus' claim note dated May 9, 2017	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
173.	Exhibit 12	ECF No. 281-14 Nautilus' First Post-Dated Claim Note Bates Nos., Nautilus-Access Re-Tender4 00031-33.	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
174.	Exhibit 13	ECF No. 281-15 August 4, 2017 Email	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
175.	Exhibit 14	ECF No. 281-16 February 12, 2020 Letter	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
176.	Exhibit 15	Expert Report of David	Relevance;	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
		B. Ezra, Esq.	foundation; as well as any other reason set forth within the FRE	
177.	Exhibit 16	Deposition Transcript of Expert David B. Ezra, Esq.	Relevance; foundation; as well as any other reason set forth within the FRE	Defendant
PLEADINGS FROM THE "COVERAGE ACTION"				
178.	Nautilus's Complaint in the Coverage Action, filed on February 24, 2015	ECF No. 269-8	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
179.	Nautilus's Motion for Partial Summary Judgment in the Coverage Action (the "MPSJ"), filed on January 15, 2016	ECF No. 269-9	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
180.	Court Order in the Coverage Action Granting the MPSJ and Closing Case, dated September 27, 2016	ECF No. 269-10	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
181.	Court Order in the Coverage Action Denying the Insureds' Motion for Reconsideration, dated May 18, 2017	ECF No. 269-11	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
182.	Order from the Ninth Circuit Affirming the Court's Order in the Coverage Action Granting the MPSJ,	ECF No. 269-33	Relevance; foundation; as well as any other reason set forth	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	filed July 2, 2019		within the FRE	
183.	Court Order in the Coverage Action Denying the Insureds' Motion for Relief from Judgment, dated August 11, 2017	ECF No. 269-20	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
184.	The Court's Order dated December 26, 2017	ECF No. 36	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
185.	The MSJ Order	ECF No. 315	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
RESPONSES TO WRITTEN DISCOVERY				
186.	Nautilus Insurance Company's Responses to Access Medical, LLC and Robert Clark Wood, II's First Request For Admissions from <i>Nautilus Insurance Company v. Access Medical, LLC; Robert Clark Wood, II; Flournoy Management, LLC</i>	ACCESS 00856 – 00869	Relevance; foundation; impermissible use of discovery responses from a separate action; as well as any other reason set forth within the FRE	Defendant
187.	Nautilus Insurance Company's Responses to Access Medical, LLC and Robert Clark Wood, II's First Request for Production of Documents from <i>Nautilus Insurance Company v. Access Medical, LLC; Robert</i>	ACCESS 00870 - 00873	Relevance; foundation; impermissible use of discovery responses from a separate action; as well as any other	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	<i>Clark Wood, II; Flournoy Management, LLC</i>		reason set forth within the FRE	
188.	Nautilus Insurance Company's Responses to Access Medical, LLC and Robert Clark Wood, II's First Set of Interrogatories From <i>Nautilus Insurance Company v. Access Medical, LLC; Robert Clark Wood, II; Flournoy Management, LLC</i>	ACCESS 00874 - 00889	Relevance; foundation; impermissible use of discovery responses from a separate action; as well as any other reason set forth within the FRE	Defendant
189.	Access's Responses to Nautilus's Requests for Admission, Set No. One, served on April 23, 2018	ECF No. 269-35	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
190.	(Protected) previously disclosed in Nautilus Request for Production Responses	PRIVILEGE LOGS 1-8	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
191.	Nautilus Amended Privilege Log for Supplemental Response to Request for Production Documents	PRIVILEGE LOGS 9-18		
NAUTILUS REQUEST FOR PRODUCTION RESPONSE DOCUMENTS				
192.	Nautilus's Supplemental Responsive Discovery Document Production Related to the First Re-Tender	Nautilus-AccessRe-Tender 1 00001-00051	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
193.	Nautilus Insurance Company Request for Production Response	Nautilus-AccessRe-Tender 2 00005-00140	Relevance; foundation; as well as any	Plaintiff

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	Documents		other reason set forth within the FRE	
194.	Nautilus Insurance Company Request for Production Response Documents	Nautilus-AccessRe-Tender 3 00001-00010	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
195.	Nautilus Insurance Company Request for Production Response Documents	Nautilus-AccessRe-Tender 4 00020-00033	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
196.	Nautilus's Responsive Discovery Document Production	NIC-000001 – 001186	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
197.	Nautilus's Supplemental Responsive Discovery Document Production	Nautilus-AccessWorkFlow-00001 – 00145	Relevance; foundation; as well as any other reason set forth within the FRE	Plaintiff
WITHHELD DOCUMENTS				
198.	Unredacted Tender Emails	Unredacted Tender Emails 1-42	Nautilus's production of these documents is subject to a court order related to a Writ of Mandamus that Nautilus is in the process of filing.	Defendant

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
NAUTILUS'S REIMBURSEMENT COUNTERCLAIMS¹⁰				
199.	Wolfe & Wyman Invoices	NAUTILUS CC0000 1-00123		
200.	Gordon Rees Invoices (time billed through July 2016)	NAUTILUS CC0012 4-00148		
201.	Gordon Rees – Invoices Billed Summary	NAUTILUS CC0014 9-00150		
202.	Wild, Carter & Tipton Invoices	NAUTILUS CC0015 1-00234		
203.	Hall Hieatt & Connely Invoices (redacted)	NAUTILUS CC0023 5-00372		
204.	Amy R. Lovegren-Tipton Invoices (redacted)	NAUTILUS CC0037 3-00393		
205.	Hemming Morse Invoices	NAUTILUS CC0039 4-00412		
206.	JAMS Invoice	NAUTILUS CC0041 3		
207.	Dowling Aaron Invoices	NAUTILUS CC0041 4		
208.	Nautilus Check Log, Claim No. 10067276, Access Medical/Robert Wood (redacted)	NAUTILUS_CC0041 5-00423		
209.	Order Granting Motion for Reimbursement (ECF No. 206), <i>Nautilus Ins. Co. v. Access Medical, LLC, et al.</i> , Case No. 2:15-cv-00321-JAD-BNW	NAUTILUS CC0042 4-00427		
210.	Judgment in a Civil Case (ECF No. 207), <i>Nautilus Ins. Co. v. Access Medical, LLC, et al.</i> , Case No. 2:15-cv-00321-JAD-BNW	NAUTILUS CC0042 8		
211.	Transcript of Deposition of Benjamin R. Falloon	NAUTILUS CC0042 9-00461		

¹⁰ Nautilus reserves the right to supplement this exhibit list as additional documentation related to the defense costs Nautilus paid are located and produced.

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
	in capacity as FRCP 30(b)(6) representative for Nautilus (Vol. I) dated July 13, 2022, <i>Nautilus Ins. Co. v. Access Medical, LLC, et al.</i> , Case No. 2:15-cv-00321-JAD-BNW and any exhibits			
212.	Copies of checks	NAUTILUS_CC0046 2-00497		
213.	Claim Notes re defense counsel transfer	NAUTILUS CC0049 9-00500		
214.	Gordon Rees Invoices (August 2016 – July 2017)	NAUTILUS CC0050 1-00651		
215.	Email from Kellie Barwick (Nautilus) re Wolfe & Wyman – Inactive Effective Immediately, dated 3/18/2016 (redacted)	NAUTILUS CC0065 2-00653		
216.	Nautilus Check Log, Claim No. 10073577., Flournoy Management, LLC	NAUTILUS CC0065 4-00660		
217.	LA Best Color Imaging Invoices (Claim 10067276)	NAUTILUS CC0066 1-00664		
218.	Aptus Court Reporting Invoice (Claim 10067276)	NAUTILUS_CC0066 5		
219.	Sean D Early MD Invoice (Claim 10067276)	NAUTILUS CC0066 6		
220.	IFY Travel and Tours Inc Invoice (Claim 10067276)	NAUTILUS CC0066 7		
221.	Hemming Morse Invoices – set 2	NAUTILUS CC0066 8-00674		
222.	Barkley Court Reporters Invoices (Claim 10073577)	NAUTILUS CC0067 5-00678		
223.	Law Office of Amy Lovegren-Tipton Invoices – set 2 (redacted)	NAUTILUS CC0067 9-00712		

EXHIBIT	DESCRIPTION	BATES	OBJECTIONS	PARTY OBJECTING
224.	Hall Hieatt & Connely Invoices – set 2 (redacted)	NAUTILUS CC0071 3-00800		
225.	Wood and Randall Invoices (Claim 10067276)	NAUTILUS CC0080 1-00802		
226.	Barkley Court Reporters Invoices (Claim 10067276)	NAUTILUS CC0080 3-00809		

(a) Electronic Evidence: At this time, the parties do not intend to present electronic evidence for purposes of jury deliberations.

(b) Depositions:

(1) Plaintiff Will Offer The Following Depositions:

a. See depositions identified as exhibits, above.

(2) Defendant Will Offer The Following Depositions:

a. Deposition Transcript of Robert “Sonny” Wood, II, taken December 23, 2020

b. Deposition Transcript of Stephen L. Strzelec, taken October 4, 2021

c. **Deposition Transcript of Benjamin R. Falloon in capacity as FRCP 30(b)(6) representative for Nautilus (Vol. I) dated July 13, 2022, *Nautilus Ins. Co. v. Access Medical, LLC, et al.*, Case No. 2:15-cv-00321-JAD-BNW**

(c) Objections To Depositions:

(1) Defendant Objects To Plaintiffs’ Depositions As Follows:

a. Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE

(2) Plaintiffs Objects To Defendant’s Depositions As Follows:

a. Relevance; foundation; impermissible hearsay; overbroad; as well as any other reason set forth within the FRE

VII. WITNESSES

The following witnesses may be called by the parties at trial, although the parties reserve the right to object to the calling of any of the below witnesses, reserve the right to call additional witnesses as necessary and reserve the right object to the addition of any witness:

1. Robert “Sonny” Wood, II

1 c/o The Schnitzer law Firm
2 9205 West Russell Road, Suite 240
3 Las Vegas, NV 89148
4 (702) 960-4050

5 Mr. Wood is expected to testify regarding his knowledge of the facts and circumstances
6 surrounding the allegations contained in the First Amended Complaint.

7 Mr. Woods is expected to testify as to his knowledge of the facts and circumstances
8 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
9 issues which include, but are not limited to the purchase of the commercial general liability policy at
10 issue and the Insureds' tender of defense to Nautilus as it relates to the Cross-Complaint Theodore
11 Switzer filed against the Insureds on or around June of 2013. **This witness is also expected to testify
12 as to his knowledge of the facts and circumstances surrounding the allegations contained to
13 Nautilus's Crossclaims for reimbursement.**

14 2. Linda Wendell Hsu, Esq.
15 c/o Armstrong Teasdale LLP
16 7160 Rafael Rivera Way, Suite 320
17 Las Vegas, NV 89113
18 (702) 678-5070

19 Ms. Hsu is expected to testify regarding her knowledge of the facts and circumstances
20 surrounding the allegations contained in the First Amended Complaint.

21 Ms. Hsu is expected to testify as to her knowledge of the facts and circumstances surrounding
22 the allegations contained in the Second Amended Complaint, and any other relevant issues which
23 include, but are not limited to the Insureds' tender of defense to Nautilus as it relates to the Cross-
24 Complaint Theodore Switzer filed against the Insureds on or around June of 2013 (hereinafter the
25 "*Switzer Action*") and the investigation and claim handling that Nautilus undertook that relates to the
26 Insureds' claim. Ms. Hsu should have knowledge of Nautilus's decision to withdraw the Insureds'
27 defense in the *Switzer Action* on the eve of trial although representing otherwise. **This witness is
28 also expected to testify as to her knowledge of the facts and circumstances surrounding the
allegations contained to Nautilus's Cross-claims for reimbursement.**

3. Theodore Switzer
c/o Gregory L. Altounian, Esq.
295 Cromwell Ave., #104

1 Fresno CA 93711
2 (559) 435-6200

3 Mr. Switzer is expected to testify regarding his knowledge of the facts and circumstances
4 surrounding the allegations contained in the First Amended Complaint.

5 Mr. Switzer is expected to testify regarding his knowledge of the facts and circumstances
6 surrounding the Insureds' Second Amended Complaint, including his allegations against the Insureds
7 in the *Switzer* Action.

8 4. Michael "James" Carrigan, Esq.
9 c/o Gregory L. Altounian, Esq.
10 295 Cromwell Ave., #104
11 Fresno CA 93711
12 (559) 435-6200

13 Mr. Carrigan is expected to testify regarding his knowledge of the facts and circumstances
14 surrounding the allegations contained in the First Amended Complaint.

15 Mr. Carrigan is expected to testify regarding his knowledge of the facts and circumstances
16 surrounding the Insureds' Second Amended Complaint, including his client's allegations against the
17 Insureds in the *Switzer* Action.

18 5. Dixie Switzer
19 c/o Gregory L. Altounian, Esq.
20 295 Cromwell Ave., #104
21 Fresno CA 93711
22 (559) 435-6200

23 Ms. Switzer is expected to testify regarding his knowledge of the facts and circumstances
24 surrounding the allegations contained in the First Amended Complaint.

25 Ms. Switzer is expected to testify regarding her knowledge of the facts and circumstances
26 surrounding the Insureds' Second Amended Complaint, including Mr. Switzer's allegations against
27 the Insureds in the *Switzer* Action.

28 6. Jacqueline Weide
 c/o The Schnitzer Law Firm
 9205 W. Russell Road, Suite 240
 Las Vegas, NV 89148
 (702) 960-4050

 Ms. Weide is expected to testify regarding his knowledge of the facts and circumstances
 surrounding the allegations contained in the First Amended Complaint.

1 Ms. Weide is expected to testify as to her knowledge of the facts and circumstances
2 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
3 issues which include, but are not limited to the Insureds' tender of defense to Nautilus as it relates to
4 the Cross-Complaint Theodore Switzer filed against the Insureds on or around June of 2013 and the
5 e-mail that was at issue in the action from which Nautilus sought declaratory relief from the Insureds.

6 7. Deborah Fanning, RN
7 Santa Barbara Cottage Hospital
8 400 W. Pueblo St.
9 Santa Barbara, CA 93105
10 (805) 569-7482

11 Ms. Fanning is expected to testify regarding his knowledge of the facts and circumstances
12 surrounding the allegations contained in the First Amended Complaint.

13 Ms. Fanning is expected to testify as to her knowledge of the facts and circumstances
14 surrounding the allegations contained in the Second Amended Complaint, including the e-mail that
15 was at issue in the action from which Nautilus sought declaratory relief from the Insureds.

16 8. PMK at Nautilus Ins. Co.
17 c/o Armstrong Teasdale LLP
18 7160 Rafael Rivera Way, Suite 320
19 Las Vegas, NV 89113
20 (702) 678-5070

21 This PMK is expected to testify regarding her knowledge of the facts and circumstances
22 surrounding the allegations contained in the Second Amended Complaint.

23 This person is expected to testify regarding his or her knowledge of the facts and
24 circumstances surrounding the allegations contained in the Second Amended Complaint, and any
25 other relevant issues, including but not limited to Nautilus's investigation and handling of the
26 Insureds' claim, including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-
27 Complaint in the *Switzer* Action. **This witness is also expected to testify as to his knowledge of
28 the facts and circumstances surrounding the allegations contained to Nautilus's Crossclaims
for reimbursement.**

9. Richard Conrad

1 Mr. Conrad is expected to testify regarding his knowledge of the facts and circumstances
2 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
3 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
4 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
5 *Switzer* Action. **This witness is also expected to testify as to his knowledge of the facts and**
6 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
7 **reimbursement.**

8
9 10. Susan Drebltko
c/o Armstrong Teasdale LLP
10 7160 Rafael Rivera Way, Suite 320
Las Vegas, NV 89113
11 (702) 678-5070

12 Ms. Drebltko is expected to testify regarding her knowledge of the facts and circumstances
13 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
14 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
15 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
16 *Switzer* Action. **This witness is also expected to testify as to her knowledge of the facts and**
17 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
18 **reimbursement.**

19
20 11. Chuck Scheiner

21 Mr. Scheiner is expected to testify regarding his knowledge of the facts and circumstances
22 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
23 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
24 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
25 *Switzer* Action. **This witness is also expected to testify as to his knowledge of the facts and**
26 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
27 **reimbursement.**

28 12. Kellie Barwick

1
2 Ms. Barwick is expected to testify regarding her knowledge of the facts and circumstances
3 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
4 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
5 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
6 *Switzer* Action. **This witness is also expected to testify as to her knowledge of the facts and**
7 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
8 **reimbursement.**

9 13. John Briggs
10 c/o Armstrong Teasdale LLP
11 7160 Rafael Rivera Way, Suite 320
12 Las Vegas, NV 89113
13 (702) 678-5070

14 Mr. Briggs is expected to testify regarding his knowledge of the facts and circumstances
15 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
16 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
17 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
18 *Switzer* Action. **This witness is also expected to testify as to his knowledge of the facts and**
19 **circumstances surrounding the allegations contained to Nautilus's Cross-claims for**
20 **reimbursement.**

21 14. Tom Kuzma
22 c/o Armstrong Teasdale LLP
23 7160 Rafael Rivera Way, Suite 320
24 Las Vegas, NV 89113
25 (702) 678-5070

26 Mr. Kuzma is expected to testify regarding his knowledge of the facts and circumstances
27 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
28 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
Switzer Action. **This witness is also expected to testify as to his knowledge of the facts and**
circumstances surrounding the allegations contained to Nautilus's Crossclaims for

1 reimbursement.

2 15. Brenda Phillips
3 14311 W Pinnacle Vista Road
4 Surprise, AZ 85387
5 623-682-3289

6 Ms. Phillips is expected to testify regarding her knowledge of the facts and circumstances
7 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
8 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
9 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
10 *Switzer* Action. **This witness is also expected to testify as to her knowledge of the facts and**
11 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
12 **reimbursement.**

13 16. Dan Curran

14 Mr. Curran is expected to testify regarding his knowledge of the facts and circumstances
15 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
16 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
17 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
18 *Switzer* Action. **This witness is also expected to testify as to his knowledge of the facts and**
19 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
20 **reimbursement.**

21 17. Kim Levensky
22 c/o Armstrong Teasdale LLP
23 7160 Rafael Rivera Way, Suite 320
24 Las Vegas, NV 89113
25 (702) 678-5070

26 Ms. Levensky is expected to testify regarding her knowledge of the facts and circumstances
27 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
28 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
Switzer Action. **This witness is also expected to testify as to her knowledge of the facts and**

1 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
2 **reimbursement.**

3 18. Weiss B. Hamid
4 c/o Buchalter
5 1000 Wilshire Blvd., Suite 1500
6 Los Angeles, CA 90017-1730
(213) 891-0700

7 Mr. Hamid is expected to testify regarding his knowledge of the facts and circumstances
8 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
9 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
10 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
11 *Switzer* Action. In addition, Mr. Hamid is expected to testify in regards to any information related
12 to the defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle any
13 claims against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
14 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
15 **Crossclaims for reimbursement.**

16 19. Calvin E. Davis, Esq.
17 c/o Gordon Rees Scully Mansukhani, LLP
18 1111 Broadway, Suite 1700
Oakland, CA 94607
T: (510) 463-8600

19 Mr. Davis is expected to testify regarding his knowledge of the facts and circumstances
20 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
21 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
22 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
23 *Switzer* Action. In addition, Mr. Davis is expected to testify in regards to any information related to
24 the defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
25 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
26 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
27 **Crossclaims for reimbursement.**

28 20. Eleanor M. Welke
c/o Lozano Smith

1 515 S. Figueroa St., Suite 750
2 Los Angeles, CA 90071
3 T: (213) 929-1066

4 Ms. Welke is expected to testify regarding her knowledge of the facts and circumstances
5 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
6 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
7 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
8 *Switzer* Action. Ms. Welke is also expected to testify in regards to any information related to the
9 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
10 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to her**
11 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
12 **Crossclaims for reimbursement.**

13 21. Allison Andrews
14 c/o Gordon Rees Scully Mansukhani, LLP
15 1111 Broadway, Suite 1700
16 Oakland, CA 94607
17 T: (510) 463-8600

18 Ms. Andrews is expected to testify regarding her knowledge of the facts and circumstances
19 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
20 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
21 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
22 *Switzer* Action. Ms. Andrews is also expected to testify in regards to any information related to the
23 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
24 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to her**
25 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
26 **Crossclaims for reimbursement.**

27 22. David L. Jones
28 c/o Gordon Rees Scully Mansukhani, LLP
1111 Broadway, Suite 1700
Oakland, CA 94607
T: (510) 463-8600

Mr. Jones is expected to testify regarding his knowledge of the facts and circumstances

1 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
 2 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
 3 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
 4 *Switzer* Action. Mr. Jones is also expected to testify in regards to any information related to the
 5 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
 6 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
 7 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
 8 **Crossclaims for reimbursement.**

9 23. Candace S. Nam, Esq.
 10 c/o Gordon Rees Scully Mansukhani, LLP
 11 1111 Broadway, Suite 1700
 12 Oakland, CA 94607
 T: (510) 463-8600

13 Ms. Nam is expected to testify regarding her knowledge of the facts and circumstances
 14 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
 15 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
 16 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
 17 *Switzer* Action. Ms. Nam is also expected to testify in regards to any information related to the
 18 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
 19 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to her**
 20 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
 21 **Crossclaims for reimbursement.**

22 24. John W. Phillips, Esq.
 23 c/o Wild, Carter & Tipton, P.C.
 24 246 West Shaw Ave.
 Fresno, CA 93704
 T: (559) 224-2131

25 Mr. Phillips is expected to testify regarding his knowledge of the facts and circumstances
 26 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
 27 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
 28 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
Switzer Action. Mr. Phillips is also expected to testify in regards to any information related to the

1 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
 2 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
 3 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
 4 **Crossclaims for reimbursement.**

5 25. Thomas A. Markeson, Esq.
 6 c/o Wild, Carter & Tipton, P.C.
 7 246 West Shaw Ave.
 8 Fresno, CA 93704
 9 T: (559) 224-2131

10 Mr. Markeson is expected to testify regarding his knowledge of the facts and circumstances
 11 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
 12 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
 13 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
 14 *Switzer* Action. Mr. Markeson is also expected to testify in regards to any information related to the
 15 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
 16 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
 17 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
 18 **Crossclaims for reimbursement.**

19 26. David A. Yengoyan, Esq.
 20 c/o Wild, Carter & Tipton, P.C.
 21 246 West Shaw Ave.
 22 Fresno, CA 93704
 23 T: (559) 224-2131

24 Mr. Yengoyan is expected to testify regarding his knowledge of the facts and circumstances
 25 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
 26 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
 27 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
 28 *Switzer* Action. Mr. Yengoyan is also expected to testify in regards to any information related to the
 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to his**
knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's

1 **Crossclaims for reimbursement.**

2 27. Ruth Newton
3 c/o Wild, Carter & Tipton, P.C.
4 246 West Shaw Ave.
5 Fresno, CA 93704
6 T: (559) 224-2131

7 Ms. Newton is expected to testify regarding his knowledge of the facts and circumstances
8 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
9 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
10 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
11 *Switzer* Action. Ms. Newton is also expected to testify in regards to any information related to the
12 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
13 against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to her
14 knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**

15 **Crossclaims for reimbursement.**

16 28. Susan Thompson
17 Hemming Morse, LLP
18 101 Montgomery St.
19 Suite 1400
20 San Francisco, CA 94104
21 T (415) 836-4000
22 F (415) 777-2062

23 Ms. Thompson is expected to testify regarding her knowledge of the facts and circumstances
24 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
25 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
26 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
27 *Switzer* Action. Ms. Thompson is also expected to testify in regards to any information related to the
28 defense of the Insureds in the *Switzer* Action and any attempts that were taken to settle the claims
against the Insureds in the *Switzer* Action. **This witness is also expected to testify as to her
knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**

29 **Crossclaims for reimbursement.**

30 29. Kenneth D. Richard

1 Mr. Richard is expected to testify regarding his knowledge of the facts and circumstances
2 surrounding the allegations contained in the Second Amended Complaint, and any other relevant
3 issues, including but not limited to Nautilus's investigation and handling of the Insureds' claim,
4 including the Insureds' tenders of defense, to Nautilus as it relates to the Cross-Complaint in the
5 *Switzer* Action. **This witness is also expected to testify as to his knowledge of the facts and**
6 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
7 **reimbursement.**

8 30. Jordan P. Schnitzer, Esq.
9 c/o The Schnitzer Law Firm
10 9205 W. Russell Road, Suite 240
11 Las Vegas, NV 89148
(702) 960-4050

12 Mr. Schnitzer, Esq is expected to testify as fact witness regarding Nautilus Insurance
13 Company's conduct during the time period at issue in this litigation. **This witness is also expected**
14 **to testify as to his knowledge of the facts and circumstances surrounding the allegations**
15 **contained to Nautilus's Crossclaims for reimbursement.**

16 31. L. Renee Green, Esq.
17 c/o Kravitz, Schnitzer & Johnson, Chtd.
18 8985 S. Eastern Ave., Ste. 200
Las Vegas, NV 89123
(702) 362-6666

19 Ms. Green, Esq is expected to testify as fact witness regarding Nautilus Insurance Company's
20 conduct during the time period at issue in this litigation. **This witness is also expected to testify as**
21 **to her knowledge of the facts and circumstances surrounding the allegations contained to**
22 **Nautilus's Crossclaims for reimbursement.**

23 32. Jennifer N. Wahlgren, Esq.
24 c/o Armstrong Teasdale LLP
25 7160 Rafael Rivera Way, Suite 320
Las Vegas, NV 89113
(702) 678-5070

26 Ms. Wahlgren, Esq. is expected to testify as fact witness regarding Nautilus Insurance
27 Company's conduct during the time period at issue in this litigation. **This witness is also expected**
28 **to testify as to her knowledge of the facts and circumstances surrounding the allegations**

1 contained to Nautilus's Crossclaims for reimbursement.

2 33. James Harper, Esq.
3 c/o Harper Selim
4 1707 Village Center Circle Suite 140
5 Las Vegas, NV 89134
6 (702) 948-9240

7 Mr. Harper, Esq is expected to testify as fact witness regarding Nautilus Insurance Company's
8 conduct during the time period at issue in this litigation. **This witness is also expected to testify as**
9 **to her knowledge of the facts and circumstances surrounding the allegations contained to**
10 **Nautilus's Crossclaims for reimbursement.**

11 34. Joel Lasky
12 c/o Armstrong Teasdale LLP
13 7160 Rafael Rivera Way, Suite 320
14 Las Vegas, NV 89113
15 (702) 678-5070

16 Mr. Lasky is expected to testify as an employee of Nautilus Insurance he has knowledge about
17 the allegations in the complaint and the defenses of defendant. **This witness is also expected to**
18 **testify as to her knowledge of the facts and circumstances surrounding the allegations contained**
19 **to Nautilus's Crossclaims for reimbursement.**

20 35. Nautilus Insurance Company
21 c/o Armstrong Teasdale LLP
22 7160 Rafael Rivera Way, Suite 320
23 Las Vegas, NV 89113
24 (702) 678-5070

25 The representative for Nautilus Insurance Company is expected to testify about the
26 allegations in the complaint and the defenses of defendant. **This witness is also expected to testify**
27 **as to knowledge of the facts and circumstances surrounding the allegations contained to**
28 **Nautilus's Crossclaims for reimbursement.**

36. Michael Kilgis

Mr. Kilgis is expected to testify as an employee of Nautilus Insurance he has knowledge about
the allegations in the complaint and the defenses of defendant. **This witness is also expected to**
testify as to her knowledge of the facts and circumstances surrounding the allegations contained
to Nautilus's Crossclaims for reimbursement.

1
2 37. Ben Falloon

3 Mr. Falloon is expected to testify as an employee of Nautilus Insurance he has knowledge
4 about the allegations in the complaint and the defenses of defendant. **This witness is also expected**
5 **to testify as to her knowledge of the facts and circumstances surrounding the allegations**
6 **contained to Nautilus's Crossclaims for reimbursement.**

7
8 36. Stephen L. Strzelec, CPCU, CLU

9 Strzelec Consulting Services
10 20719 NE 8th Street
Sammamish, WA 98074
(206) 427-4322

11 Stephen L. Strzelec, CPCU, CLU, is Plaintiffs retained expert and will provide expert
12 opinions and testimony as to his opinion and comparison to the industry standard of care regarding
13 claims handling, good faith and fair dealing and all insurer duties, specifically, that Defendant fell
14 below the standard of care.

15 37. David B. Ezra, Esq.
16 Berger Kahn
17 1 Spectrum Pointe Dr., Suite 340
Lake Forest, CA 92630
18 (949) 614-0100

19 Mr. Erza is Defendant's retained expert and will provide expert opinions and testimony as
20 to his opinion and comparison to the industry standard of care regarding claims handling, good faith
21 and fair dealing and all insurer duties, specifically, that Defendant met and exceeded the standard of
care.

22 38. Eric T. Lamhofer, Esq
23 c/o Wolfe & Wyman LLP
2212 Dupont Drive
24 Irvine, CA 92612
(949) 475-9200

25 Mr. Lamhofer is expected to testify as to his knowledge of the facts and circumstances
26 surrounding the allegations contained to Nautilus's Crossclaims for reimbursement.

27 39. Jay A. Hieatt, Esq
28 c/o Hall Hiett Connely & Bowen LLP
444 Higuera Street, Third Floor

1 **San Luis Obispo, CA 93401**
2 **(805) 544-3830**

3 **Mr. Hieatt is expected to testify as to his knowledge of the facts and circumstances**
4 **surrounding the allegations contained to Nautilus's Crossclaims for reimbursement.**

5 **40. Amy R. Lovegren-Tipton, Esq**
6 **c/o Law Office of Amy R. Lovegren-Tipton**
7 **225 W. Shaw Avenue, Suite 105**
8 **Fresno, CA 92612**
9 **(559) 421-9073**

10 **Ms. Lovegren-Tipton expected to testify as to her knowledge of the facts and**
11 **circumstances surrounding the allegations contained to Nautilus's Crossclaims for**
12 **reimbursement.**

13 **41. Robert Fisher**
14 **c/o Armstrong Teasdale LLP**
15 **7160 Rafael Rivera Way, Suite 320**
16 **Las Vegas, Nevada 89113**
17 **(702) 678-5070**

18 **Mr. Fisher is an employee of Nautilus Insurance and is expected to testify as to his**
19 **knowledge about the allegations in the complaint and the defenses of defendant. This witness**
20 **is also expected to testify as to his knowledge of the facts and circumstances surrounding the**
21 **allegations contained to Nautilus's Crossclaims for reimbursement.**

22 **42. John W. Phillips, Esq.**
23 **Fennemore Dowling Aaron**
24 **8080 Palm Avenue, Third Floor**
25 **Fresno, CA 93711**
26 **(559) 432-4500**

27 **Mr. Phillips is expected to testify as to his knowledge about the allegations in the**
28 **complaint and the defenses of defendant. This witness is also expected to testify as to his**
29 **knowledge of the facts and circumstances surrounding the allegations contained to Nautilus's**
30 **Crossclaims for reimbursement.**

31 **43. David L. Jones, Esq.**
32 **Gordon Rees Scully Mansukhani, LLP**
33 **1111 Broadway, Suite 1700**
34 **Oakland, CA 94607**
35 **(510) 463-8600**

36 **Mr. Jones is expected to testify as to his knowledge about the allegations in the complaint**

1 and the defenses of defendant. This witness is also expected to testify as to his knowledge of the
 2 facts and circumstances surrounding the allegations contained to Nautilus's Crossclaims for
 3 reimbursement.

4 44. Linda Wendell Hsu, Esq.
 5 c/o Armstrong Teasdale LLP
 6 7160 Rafael Rivera Way, Suite 320
 7 Las Vegas, Nevada 89113
 8 (702) 678-5070

9 Ms. Hsu is expected to testify as to her knowledge about the allegations in the complaint
 10 and the defenses of defendant. This witness is also expected to testify as to her knowledge of
 11 the facts and circumstances surrounding the allegations contained to Nautilus's Crossclaims
 12 for reimbursement.

13 **VIII. MOTIONS IN LIMINE**

14 At this time, the parties have not filed any Motions in Limine. The parties reserve the right
 15 to file Motions in Limine as permitted under the Federal Rules of Civil Procedure and Local Rules
 16 of this Court.

17 **IX. TRIAL DATE**

18 A bench trial for this matter is presently scheduled for Monday, May 15, 2023, at 9:00
 19 AM. (ECF No. 362.)

20 **X. TRIAL ESTIMATE**

21 Pursuant to the Joint Status Report Regarding Trial Presentations (ECF No. 369), the
 22 parties believe that they will be able to complete the presentation of evidence within ten (10)
 23 business days. At the April 4, 2023, Pretrial Conference, this Court permitted Plaintiffs and
 24 Defendants 20 hours each for presentation of their cases-in-chief, defenses, and rebuttals. ECF
 25 No. 371. The Court will consider allowing additional time if the parties are presenting their
 26 cases in an efficient manner. Id. Evidentiary arguments will not be counted against either
 27 party. Id. There will be no closing or opening statements. Id. Depositions will not be read into
 28 the record, but the deposition designations will be submitted for the Court's review post-trial
 in conjunction with the parties Proposed Findings of Fact and Conclusions of Law. Id.

XI. SCHEDULING

Judge Miranda M. Du's Order Regarding Bench Trial In Civil Cases dated March 13, 2023 (ECF No. 362), and Minutes of Proceeding for Pretrial Conference held on April 4, 2023, (ECF No. 371) set the following dates:

- 1) The case is set for a bench trial on Monday, May 15, 2023, at 9:00 AM. This is a firm trial date.
- 2) The Calendar call scheduled for Monday, April 24, 2023 at 1:00 PM is VACATED
- 3) Each party's trial brief shall be submitted by no later than one week before trial.
- 4) Proposed findings of fact and conclusions of law shall be filed no later than one week before trial.

The foregoing is approved by the parties to the action as signed by their counsel of record, below.

ARMSTRONG TEASDALE LLP

THE SCHNITZER LAW FIRM

By: /s/ Tracy A. DiFillippo
TRACY A. DIFILLIPPO, ESQ.
Nevada Bar No. 7676
MICHELLE D. ALARIE, ESQ.
Nevada Bar No. 11894
7160 Rafael Rivera Way, Suite 320
Las Vegas, Nevada 89113

By: Jordan P. Schnitzer
JORDAN P. SCHNITZER, NV Bar #10744
9205 W. Russell Road, Suite 240
Las Vegas, NV 89148

*Attorneys for Defendants Access Medical LLC
& Robert "Sonny" Wood, II*

WILLIAM S. KRONENBERG, ESQ.
(LR IA 11-2 admitted)
California Bar No. 133730
KRONENBERG LAW PC
1 Kaiser Plaza, Suite 1675
Oakland, California 94612

*Attorneys for Defendant/Counter-claimant
Nautilus Insurance Company*

IT IS SO ORDERED.



HON. MIRANDA M. DU
United States District Court Judge
DATED: April 17, 2023

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P.5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of ARMSTRONG TEASDALE LLP, and that the foregoing document was served through the CM/ECF to all parties on the service list.

Date: April 14, 2023

/s/ Christie Rehfeld

An employee of Armstrong Teasdale LLP